

THE TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

Closing Date: August 13, 2010

TRANSCRIPT OF PROCEEDINGS

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**State of West Virginia  
WATER DEVELOPMENT AUTHORITY**

180 Association Drive, Charleston, WV 25311-1217  
(304) 558-3612 - (304) 558-0299 (Fax)  
Internet: www.wvwda.org - Email: contact@wvwda.org

**PRECLOSING ATTENDANCE LIST**

Date 6/10/2010 Time 2:00 PM LGA Town of Chapmanville Program Water Development Authority

NAME	COMPANY, AGENCY, OR ORGANIZATION	TELEPHONE	FAX	E-MAIL
Carol A. Cummings	WV Water Dev Auth.	304-558-3612	304-558-0299	ccummings@wvwda.org
Ryan White	Jackson Kelly	304-340-1283	304-340-1283	srwhite@jacksonkelly.com
Mark Kauffelt	WDA / Kauffelt & Kauffelt	304-345-1272	304-345-1280	MKAUFFELT@WVDSL.NET

The Authority requests that the following information concerning the individual who will be responsible for sending Debt Service Payments to the Municipal Bond Commission be provided. (If that individual is in attendance, he/she should also sign above.) Please Print:

Name Brian Kirkendall Telephone (304) 855-0327 E-Mail brian.kirkendall@yahoo.com  
Address PO Box 426 Chapmanville, WV 25508

REMINDER: As a participant in this program, the Local Governmental Agency (LGA) agrees and is required to submit annually to the WDA a copy of its audited financial statements and a copy of its adopted budget. Also, pursuant to the Loan Agreement and the NonArbitrage Certificate (both of which are contained in the bond transcript) you are to provide annually to the WDA a rebate calculation certificate or an exception opinion showing whether a rebate amount is due to the US Government under arbitrage requirements in Section 148(f) of the US Internal Revenue Code, 1986, as amended.



*I, Natalie E. Tennant, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 8, ARTICLE 20 OF THE WEST  
VIRGINIA CODE, AND CHAPTER 8, ARTICLE 20 OF THE 2010  
SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE  
RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
August 11, 2010*

*Natalie E. Tennant*  
Secretary of State



## **ARTICLE 20**

### **COMBINED WATERWORKS AND SEWERAGE SYSTEMS**

#### **Part I—Combined Waterworks and Sewerage Systems Authorized; Definitions.**

##### **Section**

- 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions.
- 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions.
- 8-20-1b. Cooperation with other governmental units.
- 8-20-1c. Severance of combined system.

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- 8-20-2. Right of eminent domain; limitations.

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- 8-20-3. Ordinance describing project; contents.
- 8-20-4. Publication of abstract of ordinance and notice; hearing.
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- 8-20-7. Lien of bondholders.
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- 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges; change in rates, fees or charges; failure to cure delinquency; delinquent rates, fees or charges and liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.
- 8-20-11. Discontinuance of water service for nonpayment of rates or charges.
- 8-20-11a. Governmental entities subject to established rates.
- 8-20-12. Use of revenues; sinking fund.
- 8-20-13. System of accounts; audit.
- 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits.
- 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership.

#### **Part IV—Grants, Loans and Advances; Cumulative Authority.**

- 8-20-16. Grants, loans and advances.
- 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority.

#### **Part V—Operation by Board; Construction.**

- 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system.
- 8-20-19. Article to be liberally construed.

## PART I—COMBINED WATERWORKS AND SEWERAGE SYSTEMS AUTHORIZED; DEFINITIONS

## § 8-20-1. Acquisition and operation of combined waterworks and sewerage systems; extension beyond corporate limits; definitions

Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks and sewerage system either wholly within or partly within and partly without the corporate limits thereof, under the provisions of this article; and any municipality owning and operating either a waterworks or a sewerage system, but not both, may acquire, construct, establish and equip the waterworks or sewerage system which it does not then own and operate, and in either of such cases such municipality may provide by ordinance that when such waterworks or sewerage system, or both, shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and operating an existing waterworks system and an existing sewerage system may by ordinance combine the same into a single undertaking under the provisions of this article.

Any municipality which has combined its waterworks and sewerage system under the provisions of this article, or pursuant to provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of said combined waterworks and sewerage system, or both, and may finance the acquisition, construction, establishment and equipment of any such waterworks or sewerage system, or both, or the construction of extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of such combined waterworks and sewerage system, or both, by the issuance of revenue bonds under the provisions of this article.

Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality.

When used in this article, the term "waterworks system" shall be construed to mean and include a waterworks system in its entirety or any integral part thereof, including mains, hydrants, meters, valves, standpipes, storage tanks, pump tanks, pumping stations, intakes, wells, impounding reservoirs, pumps, machinery, purification plants, softening apparatus, and all other facilities necessary, appropriate, useful, convenient or incidental in connection with or to a water supply system; the term "sewerage system" shall be construed to mean and include any or all of the following: A sewage treatment plant or plants; collecting, intercepting and outlet sewers, lateral sewers, drains, force mains, conduits, pumping stations, ejector stations and all other appurtenances, extensions, additions and improvements necessary, appropriate, useful, conve-

nient or incidental for the collection, treatment and disposal in a sanitary manner of sewage and industrial wastes; and the term "combined waterworks and sewerage system" shall be construed to mean and include a waterworks and sewerage system, which a municipality determines by ordinance to operate in combination.

Acts 1939, c. 98, §§ 1, 2; Acts 1947, c. 112; Acts 1955, c. 131; Acts 1969, c. 86.

#### Cross References

Creation by charter provision of certain independent city boards, home rule powers for cities, see § 8-12-3.

General powers of every municipality and its governing body, see § 8-12-5.

#### Library References

##### Key Numbers

Municipal Corporations ☞ 708.

Waters and Water Courses ☞ 183.

Westlaw Key Number Searches: 268k708; 405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.

C.J.S. Waters §§ 228, 235.

#### Notes of Decisions

##### New and annexed tracts

##### 1. New and annexed tracts

City, rather than sewer and water districts, was entitled to provide sewer and water services to newly developed tract that was within districts' boundaries, but was annexed to city, where such services were not previously furnished to tract. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ☞ 712(1)

If a tract of real estate located within a public service district has been annexed into a municipality, then, as between the municipality and the public service district, the municipality has the superior right to extend water and/or sewer service which were not being previously fur-

nished to the tract by the public service district, and under those circumstances, a public service district would need the consent of the municipality and the Public Service Commission (PSC) in order to provide such service. Code, 16-13A-8. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ☞ 712(1)

Awarding sewer and water service rights in newly developed tract to city, rather than to sewer and water districts, could reasonably be expected to provide appropriate protection to the relevant public interests, both existing and foreseeable. Berkeley County Public Service Sewer Dist. v. West Virginia Public Service Com'n, 1998, 512 S.E.2d 201, 204 W.Va. 279. Municipal Corporations ☞ 712(1)

#### § 8-20-1a. Acquisition and operation of combined systems; extension beyond corporate limits; definitions

(a) Any municipality may acquire, construct, establish and equip and thereafter repair, maintain and operate a combined waterworks, sewerage and storm water system either wholly within or partly within and partly without the corporate limits thereof under the provisions of this article, and any municipality owning and operating a waterworks and sewerage system, but not a storm water system, may acquire, construct, establish and equip the stormwater system which it does not then own and operate, and such municipality may provide by ordinance that when such stormwater system shall have been acquired, constructed, established and equipped, the same shall thereafter be owned, repaired, maintained and operated as a combined undertaking under the provisions of this article, and any municipality already owning and oper-

ing an existing waterworks system, sewerage system, and stormwater system, may by ordinance combine the same into a single undertaking under the provisions of this article. However, no municipality may acquire, construct, establish and equip or thereafter repair, maintain and operate a combined waterworks, sewerage and stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) Any municipality which has combined its waterworks, sewerage system and stormwater systems under the provisions of this article, or pursuant to the provisions of any other law, may hereafter construct extensions, additions, betterments and improvements to any of the systems, any combination thereof, or all of the waterworks, sewerage and stormwater systems of said combined waterworks, sewerage and stormwater system, and may finance the acquisition, construction, establishment and equipment thereof, or the construction or extensions, additions, betterments and improvements thereof by the issuance of revenue bonds under the provisions of this article.

(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer or stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality.

(d) As used in this article, the following terms shall have the following meanings unless the text clearly indicates otherwise.

(1) "Stormwater system" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater system" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

(2) "Combined waterworks, sewerage and stormwater system" means a waterworks, sewerage and stormwater system which a municipality determines by ordinance to operate in combination.

## § 8-20-1a

## MUNICIPAL CORPORATIONS

(3) "Combined system" means either a combined waterworks, sewerage and stormwater system, or a combined waterworks and sewerage system.

(4) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems, and shall include and not be limited to public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" shall not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

Acts 1976, c. 83; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

### Library References

#### Key Numbers

Municipal Corporations ☞ 708.

Waters and Water Courses ☞ 183.

Westlaw Key Number Searches: 268k708;  
405k183.

#### Encyclopedias

C.J.S. Municipal Corporations §§ 1535, 1536.

C.J.S. Waters §§ 228, 235.

## § 8-20-1b. Cooperation with other governmental units

In carrying out any lawful purpose prescribed by this article, any municipality may, in the exercise of its powers, duties and responsibilities, cooperate or join with the state of West Virginia or any political subdivision, agency, board, commission, office or department thereof, however designated, or with the United States of America or any agency or department thereof.

Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## § 8-20-1c. Severance of combined system

Any municipality which has combined its waterworks and sewerage systems or waterworks, sewerage and stormwater systems, under the provisions of this article, or pursuant to provisions of any other law, may hereafter sever said combined system if the following conditions are met:

(a) An ordinance is enacted by the governing body of the municipality severing the combined system into separate systems.

(b) If revenue bonds or notes or other obligations with a lien on or pledge of the revenues of said combined system, or any part thereof, are outstanding, then the municipality must provide in said ordinance that the severance of the combined system is not effective until all such outstanding revenue bonds or notes or other obligations with a lien on or pledge of the revenues of the system, or any part thereof, are paid and the method for paying said outstanding revenue bonds or notes or other obligations. For the purposes of this section, said municipality may provide for payment of said outstanding revenue bonds or notes or other obligations by:

(1) Depositing moneys and funds with the West Virginia municipal bond commission or in escrow with a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia selected by the issuer to pay interest when due and to pay principal when due, whether at maturity or earlier redemption;

(2) Depositing securities with the municipal bond commission or said escrow trustee, the principal of and earnings on which will provide moneys sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption; or

(3) Depositing with the municipal bond commission or said escrow trustee any combination of the foregoing sufficient to pay interest when due and to pay principal when due, whether at maturity or earlier redemption.

(c) If the combined system is under the supervision and control of a separate committee, board or commission, then the governing body of the municipality must provide for the dissolution of the committee, board or commission, and the creation of other committees, boards or commissions as may be required by law.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ☞ 708.

Waters and Water Courses ☞ 183.

Westlaw Key Number Searches: 268k708; 405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.

C.J.S. Waters §§ 228, 235.

## PART II—RIGHT OF EMINENT DOMAIN

### § 8-20-2. Right of eminent domain; limitations

For the purpose of acquiring, constructing, establishing or extending any system within a combined system, or a combined system, or for the purpose of constructing any additions, betterments or improvements to any system within a combined system, or a combined system, or for the purpose of acquiring any property necessary, appropriate, useful, convenient or incidental for or to any system within a combined system, or combined system, under the provisions of this article, the municipality shall have the right of eminent domain as provided in chapter fifty-four of this code: Provided, That such right of eminent domain for the acquisition of a complete privately owned waterworks system may not be exercised without prior approval of the public service commission, and in no event shall any municipality construct, establish or extend beyond the corporate limits of the municipality a municipal waterworks system or a combined system under the provisions of this article to supply service in competition with an existing privately or municipally owned waterworks system or combined system in the municipality or within the proposed extension of the system, unless, except in the case of a stormwater system, a certificate of public convenience and necessity therefor shall have been issued by the public service commission:

Provided, however, that the power of eminent domain provided in this section shall not extend to highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways. Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Eminent Domain 28, 32.

Westlaw Key Number Searches: 148k28; 148k32.

##### Encyclopedias

C.J.S. Eminent Domain §§ 38 to 39, 44 to 45.

### PART III—REVENUE BOND FINANCING

#### § 8-20-3. Ordinance describing project; contents

The governing body of any municipality availing itself of the provisions of this article shall adopt an ordinance describing in a general way the contemplated project. If it is intended to include in the combined system any existing waterworks system or any existing sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall provide that it or they be so included in the combined system and shall describe in a general way such existing waterworks or sewerage system or both, or, if applicable, any existing stormwater system, or any of them, or all of them, to be included in the combined system. The ordinance shall state the means provided for refunding any obligations unpaid and outstanding payable solely from the revenues of any such waterworks or sewerage system, or both, or if applicable, any existing stormwater system, or any of them, or all of them. The ordinance shall determine the period of usefulness of the contemplated project.

If it is intended to acquire, construct, establish and equip a combined system or any part thereof, or to construct extensions, additions, betterments and improvements to either the waterworks system or the sewerage system of the combined system, or both, or if applicable, any existing stormwater system, or any of them, or all of them, the ordinance shall describe in a general way the works or property or system to be acquired, constructed, established or equipped or the extensions, additions, betterments and improvements to be constructed.

The ordinance shall fix the amount of revenue bonds proposed to be issued, the interest rate or rates, and any other details in connection with the bonds considered advisable. The ordinance may state that the bonds, or such ones thereof as may be specified, shall, to the extent and in the manner prescribed, be subordinated and be junior in standing with respect to principal and interest and the security thereof, to such other bonds as are designated in the ordinance.

Acts 1939, c. 98, § 4; Acts 1947, c. 112; Acts 1949, c. 91; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

## Library References

## Key Numbers

Municipal Corporations § 300.

Westlaw Key Number Search: 268k300.

## Encyclopedias

C.J.S. Municipal Corporations § 991.

**§ 8-20-4. Publication of abstract of ordinance and notice; hearing**

After the ordinance for any project under the provisions of this article has been adopted, an abstract of the ordinance, determined by the governing body to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such municipality. The notice to be published with said abstract of the ordinance shall state that said ordinance has been adopted, that the municipality contemplates the issuance of the bonds described in the ordinance, that any person interested may appear before the governing body upon a certain date, which shall not be less than ten days subsequent to the date of the first publication of such abstract and notice and which shall not be prior to the date of the last publication of such abstract and notice, and present protests and that a certified copy of the ordinance is on file with the governing body for review by interested parties during the office hours of the governing body. At such hearing all protests and suggestions shall be heard and the governing body shall take such action as it shall deem proper in the premises: Provided, That if at such hearing written protest is filed by thirty percent or more of the freeholders of the municipality, then the governing body of said municipality shall not take further action unless four fifths of the qualified members of said governing body assent thereto.

Acts 1939, c. 98, § 5; Acts 1947, c. 112; Acts 1967, c. 105; Acts 1969, c. 86; Acts 1971, c. 103; Acts 1981, 1st Ex. Sess., c. 2.

## Library References

## Key Numbers

Municipal Corporations § 294(7).

Westlaw Key Number Search: 268k294(7).

## Encyclopedias

C.J.S. Municipal Corporations § 981.

**§ 8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds**

For the purpose of defraying the cost of acquisition, construction, establishment or equipment of any system within a combined system, or a combined system, and for the purpose of paying the cost of constructing any extensions, additions, betterments or improvements to any of the systems of said combined system, or all of them, any such municipality may issue revenue bonds under the provisions of this article.

All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed twelve percent per annum, payable at such times, and shall mature within the period of usefulness



of the project involved, to be determined by the governing body and in any event within a period of not more than forty years. The bonds may be in denomination or denominations, may be in such form, either coupon or registered, may carry registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to terms of redemption, with or without a premium, may be declared to become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain other terms and covenants, as may be provided by ordinance of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

The bonds and the interest thereon, together with all properties and facilities of the municipality owned or used in connection with the combined system, and all the moneys, revenues and other income of such municipality derived from the combined system shall be exempt from all taxation by this state or any county, municipality, political subdivision or agency thereof. Bonds may be sold in such manner as the governing body shall determine. If any bonds shall be issued to bear interest at a rate of twelve percent per annum, the price at which they may be sold shall be such that the interest cost to the municipality of the proceeds of the bonds may not exceed thirteen percent per annum computed to maturity according to the standard table of bond values.

If the governing body of the municipality determines to sell any revenue bonds of such combined system for refunding purposes, the proceeds of the bonds shall be deposited at the place of payment of the bonds, obligations or securities being refunded thereby.

In case any officer whose signature appears on the bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he or she had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. The bonds shall have all the qualities of negotiable instruments under the laws of this state.

Whenever a waterworks and sewerage system or stormwater system, if applicable, is included in a combined system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of the waterworks or the sewerage system or stormwater system, if applicable, or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article.

Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system, or stormwater system, if applicable, included in a combined system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus the interest to accrue thereon to the retirement date or the next succeeding interest payment date, whichever date may be earlier.

Provision may be made that each bond to be exchanged for refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged, but each bond shall be stamped with a legend to the effect that the same has been refunded pursuant to the provisions of this article.

Acts 1939, c. 98, § 3; Acts 1947, c. 112; Acts 1957, c. 123; Acts 1969, c. 86; Acts 1970, c. 7; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ☞ 911, 922.

Taxation ☞ 218.

Westlaw Key Number Searches: 268k911;  
268k922; 371k218.

##### Encyclopedias

C.J.S. Municipal Corporations § 1649.

C.J.S. Taxation § 260.

### § 8-20-6. Bonds payable solely from revenues; not to constitute municipal indebtedness

Bonds issued under the provisions of this article shall be payable solely from the revenues derived from the combined system, and the bonds may not in any event constitute an indebtedness of such municipality within the meaning of any constitutional or statutory provision or limitation and it shall be plainly stated on the face of each bond that the same has been issued under the provisions of this article, and that it does not constitute an indebtedness of the municipality within any constitutional or statutory provision or limitation. The ordinance authorizing the issuance of the bonds may contain such covenants and restrictions upon the issuance of additional revenue bonds thereafter as may be considered necessary or advisable for the assurance of payment of the bonds thereby authorized and as may thereafter be issued.

Acts 1939, c. 98, § 6; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References:

Key Numbers

Municipal Corporations §950(15).  
Westlaw Key Number Search: 268k950(15).

Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 8-20-7. Lien of bondholders

There shall be and there is hereby created and granted a statutory mortgage lien upon such combined system which shall exist in favor of the holder of bonds hereby authorized to be issued, and each of them, and to and in favor of the holder of the coupons attached to said bonds, and such combined system shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest upon said bonds. However, no lien may attach to any portion of any highways, road or drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

Any municipality in acquiring an existing waterworks system may provide that payment therefor shall be made by issuing revenue bonds and delivering the same at such prices as may be agreed upon within the limitations prescribed in section five hereof. Any revenue bonds so issued in payment for an existing waterworks system shall for all purposes be regarded as partaking of the nature of and as being secured by a purchase money mortgage upon the property so acquired; and the holders thereof shall have, in addition to any other remedies and rights prescribed by this article, remedies and rights as may now or hereafter exist in law in the case of purchase money mortgages.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

Library References

Key Numbers

Municipal Corporations §950(15).  
Westlaw Key Number Search: 268k950(15).

Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

§ 8-20-8. Covenants with bondholders

Any ordinance authorizing the issuance of bonds hereunder, or any trust indenture with any banking institution or trust company, within or without the state, for the security of said bonds, which any municipality is hereby empowered and authorized to enter into and execute, may contain covenants with the holders of the bonds as to:

(a) The purpose or purposes to which the proceeds of sale of bonds or the revenues derived from said combined system may be applied and the securing, use and disposition thereof, including, if considered desirable, the appointment of a trustee or depository for any of the funds;

(b) The pledging of all or any part of the revenues derived from the ownership, control or operation of such combined system, including any part thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved or derived from any other sources, to the payment of the principal of or interest thereon of bonds issued hereunder and for reserve or other funds as may be considered necessary or desirable;

(c) The fixing, establishing and collecting of rates, fees or charges for the use of the services and facilities of the combined system, including the parts thereof heretofore or hereafter acquired, constructed, established, extended, equipped, added to, bettered or improved and the revision of same from time to time, as will always provide revenues at least sufficient to provide for all expenses of repair, maintenance and operation of such combined system, the payment of the principal of and interest upon all bonds or other obligations payable from the revenues of such combined system, and all reserve and other funds required by the terms of the ordinance authorizing the issuance of bonds;

(d) The transfer from the general funds of the municipality to the account or accounts of the combined system of an amount equal to the cost of furnishing the municipality or any of its departments, boards or agencies with the services and facilities of such combined system;

(e) Limitations or restrictions upon the issuance of additional bonds or other obligations payable from the revenues of such combined system, and the rank or priority, as to lien and source and security for payment from the revenues of such combined system, between bonds payable from the revenues;

(f) The manner and terms upon which all bonds and other obligations issued hereunder may be declared immediately due and payable upon the happening of a default in the payment of the principal of or interest thereon, or in the performance of any covenant or agreement with bondholders, and the manner and terms upon which defaults may be declared cured and the acceleration of the maturity of the bonds rescinded and repealed;

(g) Budgets for the annual repair, maintenance and operation of such combined system and restrictions and limitations upon expenditures for the purposes, and the manner of adoption, modification, repeal or amendment thereof, including the approval of the budgets by consulting engineers designated by holders of bonds issued hereunder;

(h) The amounts of insurance to be maintained upon the combined system, or any part thereof, and the use and disposition of the proceeds of any insurance; and

(i) The keeping of books of account, relating to such undertaking and the audit and inspection thereof, and the furnishing to the holders of bonds issued hereunder or their representatives, reports prepared, certified or approved by accountants designated or approved by the holders of bonds issued hereunder.

Any ordinance, or trust indenture may also contain other additional covenants as shall be considered necessary or desirable for the security of the holders of bonds issued under the provisions of this article, notwithstanding that other covenants are not expressly enumerated above, it being the intention hereof to grant to municipalities plenary power and authority to make any and all covenants or agreements necessary in order to secure greater marketability for bonds issued hereunder as fully and to the same extent as covenants or agreements could be made by a private corporation rendering similar services and facilities and to grant to municipalities full and complete power and

## § 8-20-8

## MUNICIPAL CORPORATIONS

authority to enter into any contracts, covenants or agreements with holders of bonds issued hereunder not inconsistent with the constitution of this state. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

### Library References

#### Key Numbers

Municipal Corporations ☞ 950(15).  
Westlaw Key Number Search: 268k950(15).

#### Encyclopedias

C.J.S. Municipal Corporations §§ 1708 to 1709.

## § 8-20-9. Operating contract

Any municipality may enter into contracts or agreements with any persons for: (1) The repair, maintenance and operation and management of the facilities and properties of the combined system, or any part thereof; or (2) the collection and disbursement of the income and revenues thereof, or for both (1) and (2), for the period of time and under terms and conditions as shall be agreed upon between the municipality and such persons. Any municipality shall have plenary power and authority to provide in the ordinance authorizing the issuance of bonds hereunder, or in any trust indenture securing the bonds, that the contracts or agreements shall be valid and binding upon the municipality as long as any of the bonds, or interest thereon, is outstanding and unpaid. Acts 1955, c. 131; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

### Library References

#### Key Numbers

Municipal Corporations ☞ 708.  
Waters and Water Courses ☞ 183.  
Westlaw Key Number Searches: 268k708;  
405k183.

#### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.  
C.J.S. Waters §§ 228, 235.

## § 8-20-10. Power and authority of municipality to enact ordinances and make rules and regulations and fix rates, fees or charges, change in rates, fees or charges; failure to cure delinquency, delinquent rates, fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure

(a) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules and regulations for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and regulations and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do. Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or stormwater facilities constructed

owned or operated by the West Virginia Division of Highways except in accordance with chapter twenty-nine-a of this code.

Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish rates, fees or charges for such purpose. Separate rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or charges for the combined water and sewer services, and, if applicable, the stormwater services. Such rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it, for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for the purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the

evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency had been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations § 708.  
Waters and Water Courses § 183.  
Westlaw Key Number Searches: 268k708;  
405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to 1536.  
C.J.S. Waters §§ 228, 235.

#### Notes of Decisions

##### Tort liability 1

##### 1. Tort liability

A municipal ordinance that is enacted pursuant to the statutory power granted to municipalities to construct, operate, maintain, care for, and protect a sewer system, and that purports

to limit, modify, or eliminate tort liabilities and immunities related to that sewer system, in a fashion that conflicts with the general law of the state, is unenforceable and void, to the extent of such conflict. Code, 8-20-10, 29-12A-5(a)(16). Calabrese v. City of Charleston, 1999, 515 S.E.2d 814, 204 W.Va. 650. Municipal Corporations § 70.

#### § 8-20-11. Discontinuance of water service for nonpayment of rates or charges

Any municipality shall also have plenary power and authority, and may covenant with the holders of any bonds issued hereunder, to shut off and discontinue the supplying of the water service of the combined system for the nonpayment of the rates, fees or charges for said water service or sewer service, or both, or, if applicable, stormwater service, or any combination thereof, or all of them.

Acts 1955, c. 133; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Waters and Water Courses § 203(13).  
Westlaw Key Number Search: 405k203(13).

##### Encyclopedias

C.J.S. Waters § 305.

#### § 8-20-11a. Governmental entities subject to established rates

The municipality and any county government, state government and federal government served by the services of the combined system shall be subject to the same rates, fees or charges established in this article or to rates, fees or charges established in harmony therewith, for service rendered to the governmental entity, and shall pay such rates, fees or charges when due from corporate funds and the same shall be considered to be part of the revenue of the combined system as defined in this article, and be applied as provided in this article, for the application of such revenues. However, no rates, fees or

charges for combined services or stormwater services may be assessed against highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### § 8-20-12. Use of revenues; sinking fund

All revenues derived from the operation of any combined system under the provisions of this article shall be set aside as collected and used only for the purpose of paying the cost of repairing, maintaining and operating such system, providing an adequate reserve fund, an adequate depreciation fund, and paying the principal of and interest upon the revenue bonds issued by the municipality under the provisions of this article. The ordinance pursuant to which any bonds are issued shall pledge the revenues derived from the combined system to the purposes aforesaid and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts so set apart into said special fund for the bond requirements shall be remitted to the West Virginia municipal bond commission to be retained and paid out by said commission consistent with the provisions of this article and the ordinance pursuant to which the bonds have been issued: Provided, That payments of principal of and interest on any bonds owned by the United States of America or any agency or department thereof may be made by the municipality directly to the United States of America or said agency or department thereof.

Acts 1939, c. 98, § 9; Acts 1969, c. 86; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ951.

Westlaw Key Number Search: 268k951.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1704 to 1705.

#### § 8-20-13. System of accounts; audit

Any municipality operating a combined system under the provisions of this article shall set up and maintain a proper system of accounts in accordance with the requirements of the public service commission, showing the amount of revenues received from the combined system and the application of the same. At least once each year the municipality shall cause the accounts to be properly audited, and a report of the audit shall be open to the public for inspection at all reasonable times.

Acts 1939, c. 98, § 10; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations Ⓒ885.

Westlaw Key Number Search: 268k885.

##### Encyclopedias

C.J.S. Municipal Corporations § 1629.



**§ 8-20-14. Repair and maintenance of municipal sewerage system outside corporate limits**

Whenever a municipality collects rates or charges from users of any part of a sewerage system located outside the corporate limits of such municipality for sewerage service rendered to such users, pursuant to the provisions of this article or other act or law, such municipality shall be responsible for the repair and maintenance of such sewerage system and the county court of the county or counties in which such sewerage system is located shall not be liable or responsible for the repair and maintenance of such sewerage system.

Acts 1957, c. 127; Acts 1969, c. 86.

*W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.*

**Library References**

**Key Numbers**

Municipal Corporations ☞708.  
Westlaw Key Number Search: 268k708.

**Encyclopedias**

C.J.S. Municipal Corporations §§ 1535 to 1536.

**§ 8-20-15. Protection and enforcement of rights of bondholders, etc.; receivership**

Any holder of any bonds issued under the provisions of this article or of any coupons representing interest accrued thereon may by civil action, mandamus or other proper proceeding enforce the statutory mortgage lien created and granted in section seven of this article, protect and enforce any and all rights granted hereunder or under any such ordinance or trust indenture, and may enforce and compel performance of all duties required by the provisions of this article or by any ordinance or trust indenture to be performed by the municipality or by the governing body or any officer, including the making and collecting of reasonable and sufficient rates, fees or charges for services rendered by the combined system.

If there be default in the payment of the principal of or interest upon any of bonds, or of both principal and interest, any court having jurisdiction shall appoint a receiver to administer said combined system on behalf of the municipality, and the bondholders or trustee, or both, with power to charge and collect rates, fees or charges sufficient to provide for the retirement of the bonds and pay the interest thereon, and for the payment of the repair, maintenance and operation expenses, and the receiver shall apply the revenues in conformity with the provisions of this article and the ordinance pursuant to which the bonds have been issued or trust indenture, or both.

Acts 1939, c. 98, § 8; Acts 1947, c. 112; Acts 1969, c. 86; Acts 2001, c. 212; eff. 90 days after April 14, 2001.

**Library References**

**Key Numbers**

Municipal Corporations ☞955(1).  
Westlaw Key Number Search: 268k955(1).

## PART IV—GRANTS, LOANS AND ADVANCES; CUMULATIVE AUTHORITY

**§ 8-20-16. Grants, loans and advances**

Any municipality is hereby empowered and authorized to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition, construction, establishment, extension or equipment of combined systems and the construction of additions, betterments and improvements thereto, and for the other purposes herein authorized, from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article, the revenues of the said combined system or grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any agency of the state, the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article notwithstanding, interest on any loans or temporary advances may be paid from the proceeds thereof until the maturity of the notes or other negotiable instrument.

In no event shall any loan or temporary advance be a general obligation of the municipality and the loans or temporary advances, including the interest thereon, shall be paid solely from the sources specified in this section.

Acts 1961, c. 106; Acts 1969, c. 86; Acts 1981, 1st Ex. Sess., c. 2; Acts 1986, c. 118; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**Library References****Key Numbers**

United States § 82(2).

Westlaw Key Number Search: 393k82(2).

**Encyclopedias**

C.J.S. United States § 155.

**§ 8-20-17. Additional and alternative method for constructing, etc., and financing combined system; cumulative authority**

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any undertaking or to the

issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article: Provided, however, that no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

Acts 1933, Ex. Sess., c. 26, § 13; Acts 1969, c. 86; Acts 1994, c. 61; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

**PART V—OPERATION BY BOARD; CONSTRUCTION**

**§ 8-20-18. Alternative procedure for acquisition, construction, etc., of combined system**

(a) As an alternative to the procedure provided in this article, any municipality is hereby empowered and authorized to acquire, construct, establish, extend, equip, repair, maintain and operate a combined system or to construct, maintain and operate additions, betterments and improvements thereto, whether acquired, constructed, established, extended or equipped under the provisions of this article or not, and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or of a portion of the governing body, or of a board or commission appointed by the governing body, as may be provided by the governing body, and if such alternative is followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen of this chapter.

However, no municipality may acquire, construct, establish, extend, repair or equip or thereafter repair, maintain and operate a combined waterworks, sewerage or stormwater system, which includes highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways without the express agreement of the commissioner of highways.

(b) In the event that the waterworks or sewerage system or both, or if applicable, stormwater services, are in existence prior to the creation of the combined system, and the waterworks or sewerage system or both, and if applicable, stormwater services, are supervised and controlled by a committee, board or commission, and the alternative provided for in subsection (a) of this

section is to be followed with respect to the supervision and control of the combined system, the governing body may by ordinance, after the creation of the combined system, provide:

(1) The manner of and procedure for transferring supervision and control from each separate committee, board or commission to the committee, board or commission which is supervising and controlling the combined system; or

(2) The manner of and procedure for combining each separate committee, board or commission into one committee, board or commission and transferring thereto supervision and control as aforesaid.

Acts 1961, c. 104; Acts 1969, c. 86; Acts 2001, c. 212, eff. 90 days after April 14, 2001.

#### Library References

##### Key Numbers

Municipal Corporations ☞ 708.

Waters and Water Courses ☞ 183.

Westlaw Key Number Searches: 268k708;  
405k183.

##### Encyclopedias

C.J.S. Municipal Corporations §§ 1535 to  
1536.

C.J.S. Waters §§ 228, 235.

### § 8-20-19. Article to be liberally construed

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

Acts 1933, Ex. Sess., c. 26, § 14; Acts 1969, c. 86.

# West's Annotated Code of West Virginia

## Using the Classification and Numbering System of the 1931 Code of West Virginia, as Amended

### Chapters 8 to 10

2010

### Cumulative Annual Pocket Part

Replacing 2009 Pocket Part supplementing 2002 Main Volume

Includes laws through the 2010 Regular Session

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(2) Place a black tarp over the fire hydrant or device if the device is temporarily inoperable or temporarily unavailable for use in a fire emergency, for a period not to exceed fourteen days.

(c) For the purposes of this section, the word "inoperable" means a fire hydrant that does not produce water flow when activated.

Acts 2009, c. 163, eff. July 9, 2009.

## ARTICLE 20

### COMBINED SYSTEMS

#### Part III—Revenue Bond Financing

##### Section

8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to

##### Section

cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

#### PART III—REVENUE BOND FINANCING

§ 8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates; discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a)(1) The governing body of a municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all necessary rules for the repair, maintenance, operation and management of the combined system of the municipality and for the use thereof. The governing body of a municipality also has the plenary power and authority to make, enact and enforce all necessary rules and ordinances for the care and protection of any such system for the health, comfort and convenience of the public, to provide a clean water supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if applicable, to properly collecting and controlling the stormwater as is reasonably possible to do. *Provided*, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) A municipality has the plenary power and authority to charge the users for the use and service of a combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the storm water services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund, an adequate depreciation fund and pay the principal and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance. The rates, fees or charges shall be changed, from time to time, as necessary, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

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(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of \$100 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, service may not be reconnected or reinstated by the municipality or governing body until another deposit equal to \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate to be set by the Public Service Commission. *Provided*, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may terminate water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments. *Provided further*, That any termination of water service must comply with all rules and orders of the Public Service Commission. *Provided however*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of twenty days after they become due, the user of the services and facilities provided shall be delinquent and the municipality or governing body may apply any deposit against any delinquent fee. The user is liable until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served. The municipality has the plenary power and authority to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and reasonable attorney's fees. *Provided*, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to filing an action in magistrate court for collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through a civil action in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality has exhausted all other remedies for collection of debts with respect to such delinquencies prior to bringing the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency has been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.

(f) Notwithstanding any other provision contained in this article, a municipality which has been designated by the Environmental Protection Agency as an entity to serve a West



Virginia Separate Storm Sewer System community, as defined in 40 C.F.R. § 122.26, has the authority to enact ordinances or regulations which allow for the issuance of orders, the right to enter properties and the right to impose reasonable fines and penalties regarding correction of violations of municipal stormwater ordinances or regulations within the municipal watershed served by the municipal stormwater system, as long as such rules, regulations, fines or acts are not contrary to any rules or orders of the Public Service Commission.

(g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served in person to the alleged violator or by certified mail, return receipt requested. The notice shall state the nature of the violation, the potential penalty, the action required to correct the violation and the time limit for making the correction. Should a person, after receipt of proper notice, fail to correct violation of the municipal stormwater ordinance or regulation, the municipality may correct or have the corrections of the violation made and bring the party into compliance with the applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting the violation from the person by instituting a civil action, as long as such actions are not contrary to any rules or orders of the Public Service Commission.

(h) A municipality which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

Acts 1939, c. 98, § 7; Acts 1947, c. 112; Acts 1969, c. 86; Acts 1989, c. 133; Acts 1990, c. 140; Acts 2001, c. 212, eff. 90 days after April 14, 2001; Acts 2004, c. 185, eff. 90 days after March 12, 2004; Acts 2008, c. 202, eff. March 8, 2008; Acts 2010, c. 201, eff. June 11, 2010.

## ARTICLE 21

### BOARD OF PARK AND RECREATION COMMISSIONERS

#### Part I—Establishment; Organization

##### Section

8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

#### PART I—ESTABLISHMENT; ORGANIZATION

§ 8-21-2. Board a public corporate body; perpetual existence; seal; name; powers.

##### Notes of Decisions

2. Powers and duties of boards, generally. exercise the powers of a public corporate body. 55 W.Va. Op. Atty. Gen. 214 (February 13, 1974) 1974 WL 174275. It is unnecessary for a public corporate body to obtain a corporate charter from the office of the Secretary of State; a private corporation cannot.

§ 8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

The board shall consist of not less than three nor more than seven members as may be provided by charter provision or ordinance, a majority of whom shall constitute a quorum for the transaction of business, except as hereinafter in this article provided. Each member of the board must be a resident and freeholder of the city. It may be provided either by charter provision or by ordinance for the appointment of the members thereof by the governing body, but unless and until such provision is made, the members of the board shall be elected by the qualified voters of the city at appropriate regular municipal elections. Membership on the governing body may not disqualify any member for election to the board. If provision is made for the appointment of members as aforesaid and the board consists of three or four

members, one governing body member shall be appointed. If the appointed shall be his or her successor elected member elected and provision of the city shall of six years, which the term member of freeholder of his or her office. Acts 1939, c. 98.

### RETIREMENT RELIANCE SION ERAG SYSTE

#### Part II for

##### Section

8-22-2.

#### Part III Fund

8-22-16.

8-22-17.

8-22-18.

8-22-18a.





## Certificate

*I, Natalie E. Tennant, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 22C, ARTICLE 1 OF THE WEST  
VIRGINIA CODE, AND CHAPTER 22C, ARTICLE 1 OF THE 2010  
SUPPLEMENT TO THE WEST VIRGINIA CODE, AS INDICATED BY THE  
RECORDS OF THIS OFFICE.



*Given under my hand and the  
Great Seal of the State of  
West Virginia on  
August 11, 2010*

*Natalie E. Tennant*  
Secretary of State



## ARTICLE 1

### WATER DEVELOPMENT AUTHORITY

#### Section

- 22C-1-1. Short title.
- 22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings.
- 22C-1-3. Definitions.
- 22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation.
- 22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.
- 22C-1-6. Powers, duties and responsibilities of authority generally.
- 22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.
- 22C-1-8. Expenditure of funds for study and engineering of proposed projects.
- 22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.
- 22C-1-10. Trustee for bondholders; contents of trust agreement.
- 22C-1-11. Trust agreements for related responsibilities; reimbursements.
- 22C-1-12. Legal remedies of bondholders and trustees.
- 22C-1-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.
- 22C-1-14. Use of funds by authority; restrictions thereon.
- 22C-1-15. Investment of funds by authority.
- 22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.
- 22C-1-17. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.
- 22C-1-18. Water development bonds lawful investments.
- 22C-1-19. Purchase and cancellation of notes or bonds.
- 22C-1-20. Refunding bonds.
- 22C-1-21. Exemption from taxation.
- 22C-1-22. Acquisition of property by authority—Acquisition by purchase; governmental agencies authorized to convey, etc., property.
- 22C-1-23. Same—Acquisition under subdivision (10), section six of this article; property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.
- 22C-1-24. Financial interest in contracts prohibited; penalty.
- 22C-1-25. Meetings and records of authority to be kept public.
- 22C-1-26. Liberal construction of article.
- 22C-1-27. Authorized limit on borrowing.

#### § 22C-1-1. Short title

This article shall be known and cited as the "Water Development Authority Act."

Acts 1994, c. 61.

**Cross References**

Environmental protection division, allocation of appropriations and effect on personnel, see § 22-1-10.

**Administrative Code References**

Water Development Authority rules, see W. Va. Code St. R. § 44-1-1 et seq.

**United States Code Annotated**

Grants to states, water resources planning, see 42 U.S.C.A. § 1962c et seq.

River basin commissions, see 42 U.S.C.A. § 1962b et seq.

Water resources planning, see 42 U.S.C.A. § 1962 et seq.

**§ 22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings**

It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, through the establishment, funding, operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to: (1) Protect and improve public health; (2) assure the fullest use and enjoyment of such water by the public; (3) provide suitable environment for the propagation and protection of animal, bird, fish, aquatic and plant life, all of which are essential to the health and well-being of the public; and (4) provide water of the necessary quality and in the amount needed for the development, maintenance and expansion of, and to attract service industries and businesses, agriculture, mining, manufacturing and other types of businesses and industries.

To assist in the preservation, protection, improvement and management of the purity and quality of the waters of this state, to prevent or abate pollution of water resources and to promote the health and welfare of citizens of this state, it is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient purification of water; the disposal of liquid and solid wastes harmful to the public health and safety removed from such water; to improve water and stream quality; and to assist and cooperate with governmental agencies in achieving all of the purposes set forth in this section.

The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the establishment, funding, operation and maintenance of water development projects as provided for in this article.

Acts 1994, c. 61.

**Library References**

Environmental Law ¶165.

Waters and Water Courses ¶182.

Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment § 172.

C.J.S. Waters §§ 483, 505.

**§ 22C-1-3. Definitions**

As used in this article, unless the context clearly requires a different meaning:

(1) "Authority" means the water development authority provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) "Beneficial use" means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) "Board" means the water development authority board provided for in section four of this article, which shall manage and control the water development authority.

(4) "Bond" or "water development revenue bond" means a revenue bond or note issued by the water development authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water or wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of water development revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the authority, for surveys, borings, preparation of plans and specifications and

other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or water development revenue bonds as authorized by the provisions of this article.

(7) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works or activity in the operation or process of which industrial wastes or other wastes are produced.

(8) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate public water or wastewater facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(9) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or any combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1)

contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) "Project" or "water development project" means any public water or wastewater facility, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) "Public roads" mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) "Public utility facilities" means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal or interest, charges or other fees on loans, or any other collections on loans made by the water development authority to governmental agencies to finance, in whole or in part, the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present.

(19) "Water resources," "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) "Wastewater" means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and includes, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, wastewater, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(22) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

Acts 1994, c. 61.

#### Notes of Decisions

##### Person 1

##### 1. Person

The state and its political subdivisions are within the meaning of the terms "person" and "another" as those terms are used in the statute prohibiting one from obtaining money, goods, labor, services and other things of value from

another person under false pretenses; thus, the state and its political subdivisions may be the victim of that offense. Code, 61-3-24(a, d); Code, 61-3-24(a, b) (1993); Code, 61-3-24(a, b) (1987). State v. Zain, 1999, 528 S.E.2d 748, 207 W.Va. 54, certiorari denied 120 S.Ct. 1541, 529 U.S. 1042, 146 L.Ed.2d 354. False Pretenses Ⓒ 1

#### **§ 22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority; compensation**

(a) The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its



purposes and duties are essential governmental functions and for a public purpose.

(b) The authority is controlled, managed and operated by a seven-member board known as the water development board. The governor or designee, the secretary of the department of environmental protection or designee and the commissioner of the bureau for public health or designee are members ex officio of the board. Four members are appointed by the governor, by and with the advice and consent of the Senate, for six-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, appointments are filled in the same manner as the original appointment for the remainder of the unexpired term. A member continues to serve until the appointment and qualification of the successor. More than two appointed board members may not at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

(c) All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his or her duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two of said chapter. The governor may remove any board member for cause as provided in article six of said chapter.

(d) The governor or designee serves as chair. The board annually elects one of its appointed members as vice chair and appoints a secretary-treasurer, who need not be a member of the board. Four members of the board is a quorum and the affirmative vote of four members is necessary for any action taken by vote of the board. A vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

(e) The governor or designee, the secretary of the department of environmental protection and the commissioner of the bureau for public health do not receive compensation for serving as board members. Each appointed member receives an annual salary of twelve thousand dollars, payable in monthly installments. Each of the seven board members is reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties as a member of the board in a manner consistent with guidelines of the travel management office of the department of administration. All expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(f) There is a director of the authority appointed by the governor, with the advice and consent of the Senate, who serves at the governor's will and

pleasure. The director is responsible for managing and administering the daily functions of the authority and for performing other functions necessary to the effective operation of the authority. The compensation of the director is fixed annually by the board.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995; Acts 2001, c. 262, eff. April 14, 2001; Acts 2002, c. 267, eff. 90 days after March 9, 2002; Acts 2005, 1st Ex. Sess., c. 3, eff. Jan. 29, 2005.

#### Library References

Environmental Law ☞216.

Waters and Water Courses ☞18.

Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. Waters §§ 368, 377 to 379.

### **§ 22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements**

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: Provided, That the amount of the refinancing may not exceed fifty percent of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to governmental agencies. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the director of the division of environmental protection or in the process of preparation by the director and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all revenues from the project after a reasonable allowance for operation and

## § 22C-1-5

## ENVIRONMENTAL RESOURCES

maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement; and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995.

### Library References

Environmental Law ☞ 216, 216.  
Waters and Water Courses ☞ 18, 18.  
Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment §§ 130, 172.  
C.J.S. Waters §§ 368, 377 to 379.

### Notes of Decisions

#### In general 1

##### 1. In general

Statute authorizes Water Development Authority (WDA) to directly impose on public service district, which operates public utility as defined by separate statutory provision, in its own name and for its own benefit service charges determined by it to be necessary when public service district defaults on loan made by Water Development Authority to public service

district; however, Water Development Authority's power to impose such service charges upon public service district which operates public utility is subject to regulatory review and approval of Public Service Commission (PSC) pursuant to separate statute. Code, 22C-1-7, 24-1-2, 24-2-1. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Waters And Water Courses ☞ 183.5

## § 22C-1-6. Powers, duties and responsibilities of authority generally

The water development authority, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections nine, ten and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects, and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water or wastewater facilities operated under permits issued pursuant to the provisions of article eleven, chapter twenty-two of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal

advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents and other employees, who are covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the

making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

Acts 1994, c. 61.

**§ 22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights**

In order to ensure that the public purposes to be served by the authority may be properly carried out and in order to assure the timely payment to the authority of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the authority has, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

(1) The authority may directly impose, in its own name and for its own benefit service charges determined by it to be necessary under the circumstances upon all users of the water development project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the water development project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such water development project.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.

Acts 1994, c. 61.

## § 22C-1-7

## ENVIRONMENTAL RESOURCES

### Library References

Environmental Law ☞216.  
Waters and Water Courses ☞183.5, 203.  
Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment §§ 130, 172.  
C.J.S. Waters §§ 483, 543 to 581, 666 to 732.

### Notes of Decisions

#### In general 1

##### 1. In general

Statute authorizes Water Development Authority (WDA) to directly impose on public service district, which operates public utility as defined by separate statutory provision, in its own name and for its own benefit service charges determined by it to be necessary when public service district defaults on loan made by Water Development Authority to public service

district; however, Water Development Authority's power to impose such service charges upon public service district which operates public utility is subject to regulatory review and approval of Public Service Commission (PSC) pursuant to separate statute. Code, 22C-1-7, 24-1-2, 24-2-1. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Waters And Water Courses ☞ 183.5

## § 22C-1-8. Expenditure of funds for study and engineering of proposed projects

With the approval and the consent of the board, either the director of the division of environmental protection or the commissioner of the bureau of public health, or both of them, shall expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed water development project and may use its engineering and other forces, including consulting engineers and sanitary engineers, for the purpose of effecting such study. All such expenses incurred by the director or commissioner prior to the issuance of water development revenue bonds or notes under this article shall be paid by the director or commissioner and charged to the appropriate water development project and the director and commissioner shall keep proper records and accounts, showing the amounts so charged. Upon the sale of water development revenue bonds or notes for a water development project, the funds so expended by the director or commissioner, with the approval of the authority, in connection with such project, shall be repaid to the division of environmental protection or bureau of public health from the proceeds of such bonds or notes.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.  
Waters and Water Courses ☞183.5.  
Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment §§ 130, 172.  
C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance

The authority is hereby empowered to issue from time to time water development revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance, in whole or in part, by loans to governmental agencies, one or more water development projects, but

the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects.

The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of water development revenue refunding bonds by the state pursuant to the provisions of section twenty of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes are obligations of the authority payable out of the revenues and reserves created for such purposes by the authority, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

All such bonds and notes shall have and are hereby declared to have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the authority, bear such date and mature at such time, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by the chair and vice-chair of the authority, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the authority. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery and in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the



holders thereof) as to pledging all or any part of the revenues of the authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; a covenant to fix, alter and collect rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any water development project or any other assets of the authority; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; notes issued in anticipation of the issuance of bonds, the agreement of the authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority; securing any bonds or notes by a trust agreement; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes are less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chair of the authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state, for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the authority to be pledged for payment of such bonds or notes: Provided, That the Legislature is not required to make any appropriation so requested, and the amount of such deficiencies is not a debt or liability of the state.

Neither the members of the authority nor any person executing the bonds or notes are liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.  
States ☞146.

Waters and Water Courses ☞183.5.  
Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 437 to 455.

C.J.S. Waters §§ 483, 543 to 581.

### Notes of Decisions

#### In general 1

##### 1. In general

Statute authorizes Water Development Authority (WDA) to directly impose on public service district, which operates public utility as defined by separate statutory provision, in its own name and for its own benefit service charges determined by it to be necessary when public service district defaults on loan made by Water Development Authority to public service

district; however, Water Development Authority's power to impose such service charges upon public service district which operates public utility is subject to regulatory review and approval of Public Service Commission (PSC) pursuant to separate statute. Code, 22C-1-7, 24-1-2, 24-2-1. State ex rel. Water Development Authority v. Northern Wayne County Public Service Dist., 1995, 464 S.E.2d 777, 195 W.Va. 135. Waters And Water Courses 183.5

### § 22C-1-10. Trustee for bondholders; contents of trust agreement

In the discretion of the authority, any water development revenue bonds or notes or water development revenue refunding bonds issued by the authority under this article may be secured by a trust agreement between the authority and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

Any such trust agreement may pledge or assign revenues of the authority to be received, but shall not convey or mortgage any water development project or any part thereof. Any such trust agreement or any resolution providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including the provisions contained in section nine of this article and covenants setting forth the duties of the authority in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation and insurance of the water development project the cost of which is paid, in whole or in part, from the proceeds of such bonds or notes, the rentals or other charges to be imposed for the use or services of any water development project, provisions with regard to the payment of the principal of and interest, charges and fees on loans made to governmental agencies from the proceeds of such bonds or notes, the custody, safeguarding, and application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such water development project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the

## § 22C-1-10

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cost of the operation of the water development project. Any such trust agreement or resolution authorizing the issuance of water development revenue bonds may provide the method whereby the general administrative overhead expenses of the authority will be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.

States ☞146.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 437 to 455.

C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-11. Trust agreements for related responsibilities; reimbursements

Notwithstanding any other provision of this code to the contrary, when the authority acts in the capacity of fiscal agent, authorizing authority or some other capacity for any agency, department, instrumentality or public corporation of the state which is issuing or purchasing bonds or notes, the authority may, in the exercise of its responsibilities, enter into trust agreements with one or more trust companies or banking institutions having trust powers, located within or without the state, with respect to the receipt, investment, handling, payment and delivery of funds of such agency, department, instrumentality or public corporation. The authority is entitled to reimbursement for the expenses of the authority incident to performing such services, including the fees and expenses of third parties providing services to the authority with respect thereto, from the proceeds of bonds or notes or of the revenues derived by such agency, department, instrumentality or public corporation.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.

States ☞146.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 437 to 455.

C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-12. Legal remedies of bondholders and trustees

Any holder of water development revenue bonds issued under the authority of this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil action, mandamus or other proceedings, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or resolution, to be performed by the authority or any officer

thereof, including the fixing, charging and collecting of sufficient rentals or other charges.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.

States ☞160.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States § 440.

C.J.S. Waters §§ 483, 543 to 581.

### § 22C-1-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article

Water development revenue bonds and notes and water development revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. This article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.

States ☞166.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States § 448.

C.J.S. Waters §§ 483, 543 to 581.

### § 22C-1-14. Use of funds by authority; restrictions thereon

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of water development revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and

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provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same, or except when invested pursuant to section fifteen of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.

States ☞119.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 324 to 348, 351, 353 to 357,  
362 to 363, 368.

C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-15. Investment of funds by authority

The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

(1) Direct obligations of or obligations guaranteed by the United States of America;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(4) Certificates of deposit secured by obligations of the United States of America;

(5) Direct obligations of or obligations guaranteed by the state of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their

purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any corporations organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (ii) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet or Moody's.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.

States ☞124.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 374 to 376.

C.J.S. Waters §§ 483, 543 to 581.

### **§ 22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies**

This section applies to any water development project or projects which are owned, in whole or in part, by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges are not subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water or wastewater facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof, and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.	C.J.S. Health and Environment §§ 130, 172.
Waters and Water Courses ☞183.5, 203.	C.J.S. Waters §§ 483, 543 to 581, 666 to 732.
Westlaw Topic Nos. 149E, 405.	

#### § 22C-1-17. Maintenance, operation and repair of projects; reports by authority to governor and Legislature

Each water development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority or if owned by a governmental agency, by such governmental agency, or the authority or such governmental agency shall cause the same to be maintained and kept

in good condition and repair. Each such project owned by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.

C.J.S. Health and Environment §§ 130, 172.

Waters and Water Courses ☞183.5.

C.J.S. Waters §§ 483, 543 to 581.

Westlaw Topic Nos. 149E, 405.

### § 22C-1-18. Water development bonds lawful investments

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all water development revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

Acts 1994, c. 61.

*Acts 1999, c. 147, created the West Virginia investment management board, which absorbed the powers and duties of the board of investments. See § 12-6-3.*

#### Library References

States ☞157.

C.J.S. States § 441.

Waters and Water Courses ☞183.5.

C.J.S. Waters §§ 483, 543 to 581.

Westlaw Topic Nos. 360, 405.

### § 22C-1-19. Purchase and cancellation of notes or bonds

The authority, subject to such agreements with noteholders or bondholders as may then exist, has the power, out of any funds available therefor, to purchase notes or bonds of the authority.

If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the



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next interest payment date thereon. If the notes or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be canceled.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.

States ☞147.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 437, 443 to 445.

C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-20. Refunding bonds

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article are payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and are subject to the provisions contained in section nine of this article and shall be secured in accordance with the provisions of sections nine and ten of this article.

Acts 1994, c. 61.

### Library References

Environmental Law ☞216.

States ☞152.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. States §§ 449 to 450.

C.J.S. Waters §§ 483, 543 to 581.

## § 22C-1-21. Exemption from taxation

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of the residential, agricultural, recreational, economic, commercial and industrial

opportunities and is a public purpose. As the operation and maintenance of water development projects are essential governmental functions, the authority is not required to pay any taxes or assessments upon any water development project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds and notes and all interest and income thereon are exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

Acts 1994, c. 61.

#### Library References

Taxation Ⓒ2173, 2276, 2315, 2316, 2330.  
Westlaw Topic No. 371.

### § 22C-1-22. Acquisition of property by authority—Acquisition by purchase; governmental agencies authorized to convey, etc., property

The authority may acquire by purchase, whenever it deems such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands it deems necessary or convenient for the construction and operation of any water development project upon such terms and at such prices it considers reasonable and can be agreed upon between the authority and the owner thereof, and take title thereto in the name of the state.

All governmental agencies, notwithstanding any contrary provision of law, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

Acts 1994, c. 61.

#### Library References

Eminent Domain Ⓒ27 to 32.	Westlaw Topic Nos. 148, 149E, 405.
Environmental Law Ⓒ216.	C.J.S. Health and Environment §§ 130, 172.
Waters and Water Courses Ⓒ183.5.	C.J.S. Waters §§ 483, 543 to 581.

### § 22C-1-23. Same—Acquisition under subdivision (10), section six of this article; property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities

The authority may acquire, pursuant to subdivision (10), section six of this article, any land, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any water development project.

This section does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

When the authority finds it necessary to change the location of any portion of any public road, state highway, railroad or public utility facility in connection with the construction of a water development project, it shall cause the same to be reconstructed at such location as the unit or division of government having jurisdiction over such road, highway, railroad or public utility facility deems most favorable. Such construction shall be of substantially the same type and in as good condition as the original road, highway, railroad or public utility facility. The cost of such reconstruction, relocation or removal and any damage incurred in changing the location of any such road, highway, railroad or public utility facility shall be paid by the authority as a part of the cost of such water development project.

When the authority finds it necessary that any public highway or portion thereof be vacated by reason of the acquisition or construction of a water development project, the authority shall request the commissioner of the division of highways, in writing, to vacate such highway or portion thereof if the highway or portion thereof to be vacated is part of the state road system, or, if the highway or portion thereof to be vacated is under the jurisdiction of a county or a municipality, the authority shall request the governing body of such county or municipality to vacate such public road or portion thereof. The authority shall pay to the commissioner of the division of highways or to the county or municipality, as the case may be, as part of the cost of such water development project, any amounts required to be deposited with any court in connection with proceedings for the determination of compensation and damages and all amounts of compensation and damages finally determined to be payable as a result of such vacation.

The authority may make reasonable rules for the installation, construction, maintenance, repair, renewal, relocation and removal of railroad or public utility facilities in, on, over or under any water development project. Whenever the authority determines that it is necessary that any such facilities installed or constructed in, on, over or under property of the authority pursuant to such rules be relocated, the railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the authority. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the authority as a part of the cost of such water development project. In case of any such relocation or removal of facilities, the railroad or public utility owning or operating them, and its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances in the new location in, on, over or under the property

of the authority for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

Acts 1994, c. 61.

#### Library References

Eminent Domain ☞27 to 32.

Environmental Law ☞216.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 148, 149E, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. Waters §§ 483, 543 to 581.

### § 22C-1-24. Financial interest in contracts prohibited; penalty

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he or she is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞216.

Waters and Water Courses ☞183.5.

Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment §§ 130, 172.

C.J.S. Waters §§ 483, 543 to 581.

### § 22C-1-25. Meetings and records of authority to be kept public

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

Acts 1994, c. 61.

#### Library References

Environmental Law ☞139.

Westlaw Topic No. 149E.

C.J.S. Health and Environment §§ 130, 173.

### § 22C-1-26. Liberal construction of article

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

Acts 1994, c. 61.

## § 22C-1-26

## ENVIRONMENTAL RESOURCES

### Library References

Environmental Law Ⓒ167.  
Waters and Water Courses Ⓒ182.  
Westlaw Topic Nos. 149E, 405.

C.J.S. Health and Environment § 172.  
C.J.S. Waters §§ 483, 505.

## § 22C-1-27. Authorized limit on borrowing

The aggregate principal amount of bonds and notes issued by the authority may not exceed five hundred million dollars outstanding at any one time: Provided, That before the authority issues bonds and notes in excess of four hundred million dollars the Legislature must pass a resolution authorizing this action: Provided, however, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any refunding bonds or notes, shall be excluded.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995; Acts 2000, c. 278, eff. March 11, 2000.

### Library References

Environmental Law Ⓒ216.  
States Ⓒ115.  
Waters and Water Courses Ⓒ183.5.  
Westlaw Topic Nos. 149E, 360, 405.

C.J.S. Health and Environment §§ 130, 172.  
C.J.S. States §§ 358 to 371.  
C.J.S. Waters §§ 483, 543 to 581.

# West's Annotated Code of West Virginia

*Using the Classification and  
Numbering System of the  
1931 Code of West Virginia,  
as Amended*

**Chapters 22B to 23**

**2010  
Cumulative Annual Pocket Part**

**Replacing 2009 Pocket Part supplementing 2006 Main Volume**

**Includes laws through the 2010 Regular Session**

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## ARTICLE 1

## WATER DEVELOPMENT AUTHORITY

## Section

22C-1-3.

## Definitions.

22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements.

22C-1-6. Powers, duties and responsibilities of authority generally.

## Section

22C-1-16.

Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies.

## § 22C-1-1. Short title

## United States Code Annotated

Environmental Quality Improvement Act of 1970, see 42 U.S.C.A. § 4321 et seq. National Environmental Policy Act of 1969, see 42 U.S.C.A. § 4321 et seq.

## § 22C-1-3. Definitions

As used in this article, unless the context clearly requires a different meaning:

(1) "Authority" means the Water Development Authority provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) "Beneficial use" means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) "Board" means the Water Development Authority Board provided for in section four of this article, which shall manage and control the Water Development Authority.

(4) "Bond" or "water development revenue bond" means a revenue bond, note or other evidence of indebtedness issued by the Water Development Authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement, and providing furnishings or equipment.

(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water facilities, stormwater systems or wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the authority providing for the issuance of water development revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing

of any such project, agency, with the specifications and location of a project, proceeds of loans article.

(7) "Establish" pulp mill, mine, each, and every industrial waste.

(8) "Governme" division or unit conservation dist. governmental an public corporat water facilities; or any agency, d established purs

(9) "Industrial combination the trade or busin natural resource as defined in this

(10) "Other w other wood deb dyestuffs, acids, wastes which in pollution of any o

(11) "Owner" title or interest this article.

(12) "Person" company, organ United States political subdivi service district; partnership; tra individually or a

(13) "Pollutio or indirectly, of kind or characte does, will or is any of such wa chemical or bio the resulting co an extent as to injurious to the existing animal domestic, comm and also means of treated or character, in or will or is like established ther this state auth

of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or water development revenue bonds as authorized by the provisions of this article.

(7) "Establishment" means an industrial establishment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works or activity in the operation or process of which industrial wastes or other wastes are produced.

(8) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate public water facilities, stormwater systems or wastewater facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(9) "Industrial wastes" means any liquid, gaseous, solid or other waste substance or any combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, are also industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the State of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means: (a) The discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will or is likely to: (1) contaminate or substantially contribute to the contamination of any of such waters; or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters: (i) Directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare; or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life; or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.



(14) "Project" or "water development project" means any public water facility, stormwater system or wastewater facility, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the Water Development Authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) "Public roads" mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) "Public utility facilities" means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the Water Development Authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the Water Development Authority to governmental agencies to finance, in whole or in part, the acquisition or construction of any water development project or projects or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present.

(19) "Stormwater system" means a stormwater system in its entirety or any integral part thereof used to collect, control or dispose of stormwater and an associated stormwater management program. It includes all facilities, structures and natural water courses used for collecting and conducting stormwater to, through and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: Inlets, conduits, canals, outlets, channels, ponds, drainage ways, easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies and pumping stations. The term "stormwater system" does not include highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(20) "Stormwater management program" means those activities associated with the management, operation and maintenance and control of stormwater and stormwater systems and includes, but is not limited to, public education, stormwater and surface runoff water quality improvement, mapping, planning, flood control, inspection, enforcement and any other activities required by state and federal law. The term "stormwater management program" does not include those activities associated with the management, operation, maintenance and control of highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of the Division of Highways.

(21) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(22) "Wastewater" means any water containing sewage, industrial wastes or other wastes or contaminants derived from the prior use of such water and includes, without limiting the

generality of and dispose of

(23) "Waste" means disposing of, limiting the, industrial waste, temporary or sanitary sewer, to transport, appurtenances and pumping

(24) "Water" means water, both, distribution of human consumption, Acts 1994, c. 61

Highways, abatement, see

§ 22C-1-5

To accomplish set forth in the maintain, repair, pursuant to make loans and development, finance debt is the refinancing regardless of the refinancing project and the of this state, whole or in part be undertaken, applicable to Department of and to be cons waters of the or constructing the authority into between acquisition or include, without

(1) The cost the security the project after or other appro

(2) The spec refinancing of to the disbur governmental engineering fe

generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of:

(23) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes or other wastes, waste water and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(24) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

#### United States Code Annotated

Highways, programs and projects, pollution abatement, see 23 U.S.C.A. § 328.

#### § 22C-1-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies are subject to terms of loan agreements

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by governmental agencies, which loans may include amounts to refinance debt issued for existing water development projects of the governmental agency when the refinancing is in conjunction with the financing for a new water development project regardless of the source of the financing for the new project: *Provided*, That the amount of the refinancing may not exceed 50% of the aggregate amount of the refinancing of an existing project and the financing of a new project; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of projects, or finance projects, in whole or in part, by loans to governmental agencies. A water development project may not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the Secretary of the Department of Environmental Protection or in the process of preparation by the secretary and to be consistent with the standards set by the state environmental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing projects or for making a loan or grant for projects shall include a finding by the authority that the determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include, without limitation, the following provisions:

(1) The cost of the project, the amount of the loan, the terms of repayment of the loan and the security therefor, which may include, in addition to the pledge of all revenues from the project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on the project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project, including engineering fees and other administrative costs relating to development of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay, the obligations of the governmental agency under the loan agreement, increase service charges from persons using the project, which service charges shall be pledged for the repayment of the loan together with all interest, fees and charges thereon and all other financial obligations of the governmental agency under the loan agreement;

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project;

(5) The number of proposed customers and their physical locations within the project, and providing as a condition of the agreement, that no proposed customers listed in the project application agreement may be removed from inclusion in the project without prior authorization of the board; and

(6) The agreement of the governmental agency to perform an annual maintenance audit which maintenance audit shall be submitted to the board and the Public Service Commission of West Virginia.

Acts 1994, c. 61; Acts 1995, c. 252, eff. 90 days after March 3, 1995; Acts 2009, c. 221, eff. April 10, 2009.

### § 22C-1-6. Powers, duties and responsibilities of authority generally

The Water Development Authority has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

(1) Adopt and, from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business; and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office, and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name and particularly to enforce the obligations and covenants made under sections nine, ten and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for

carrying out the right of eminent domain facilities, operations, twenty-two or shall be paid.

(11) Make necessary or When the cost services, involve a written contract or legal advice. If legal advice this code, the performed or of the work and specific contract or let the authority development requirements pursuant to be reasonable operation or for any and all required of all conditioned on.

(12) Employ civil service, accounting experts as are not compensation water development funds appropriate.

(13) Receive grants for or development facilities and labor or other such grants and.

(14) Engage ter systems or.

(15) Purchase and for the and its officers death of person to provide under or in any trust.

(16) Charge development fees and charge agencies in the.

(17) Establish authority to see the authority.

(18) Administer Rehabilitation chapter twenty.

carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water facilities, stormwater systems or wastewater facilities, operated under permits issued pursuant to the provisions of article eleven, chapter twenty-two of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids; but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents and other employees, who are covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the Governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water facilities, stormwater systems or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor or other things of value to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water facilities, stormwater systems or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Administer on behalf of the Department of Environmental Protection the Dam Safety Rehabilitation Revolving Fund Loan Program pursuant to the provisions of article fourteen of chapter twenty-two of this code. Revenues or moneys designated by this code or otherwise

public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

## ARTICLE 2

## WATER POLLUTION CONTROL REVOLVING FUND ACT

## Section

22C-2-1. Definitions.

22C-2-5. Collection of money due to the fund.

## § 22C-2-1. Definitions

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the Water Development Authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local entity that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

- (1) Developmental, planning and feasibility studies, surveys, plans and specifications;
- (2) Architectural, engineering, financial, legal or other special services;
- (3) Acquisition of land and any buildings and improvements on the land or buildings, including the discharge of any obligations of the sellers of the land, buildings or improvements;
- (4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;
- (5) The reasonable costs of financing incurred by the local entity in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service and the funding of accounts and reserves which the authority may require; and
- (6) Other items that the Department of Environmental Protection determines to be reasonable and necessary.

(c) "Fund" means the State Water Pollution Control Revolving Fund provided for in this article as it may be expanded or modified, from time to time, pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or by the executive order of the Governor issued to comply with federal laws relating to the acts.

(d) "Instrumentality" means the Department of Environmental Protection or the agency designated by an order of the Governor as having the primary responsibility for administering the fund pursuant to the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, and the Federal Safe Drinking Water Act 42 U.S.C. § 300f through § 300j-26, inclusive, as amended, or other federal laws.

(e) "Local entity" means any county, city, town, municipal corporation, authority, district, public service district, commission, banking institution, political subdivision, regional governmental authority, state government agency, interstate agency or not-for-profit association or corporation in West Virginia.

(f) "Project" means any water or wastewater treatment facility located or to be located in or outside this state by a local entity and includes:

appropriated for use by the authority pursuant to the provisions of this article may not be used for the Dam Safety Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety Rehabilitation Revolving Fund shall be kept separate from all revenues and moneys of the authority.

(19) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

Acts 1994, c. 61; Acts 2008, c. 203, eff. June 5, 2008.

**§ 22C-1-16. Rentals and other revenues from water development projects owned by the authority; contracts and leases of the authority; cooperation of other governmental agencies; bonds of such agencies**

This section applies to any water development project or projects which are owned, in whole or in part, by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges are not subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain public water facilities, stormwater systems or wastewater facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water facility, stormwater system or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority. *Provided*, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same

public need as governmental agency. Acts 1994, c. 61.

(1) be: WA

Section  
22C-2-1. Defin  
22C-2-5. Collec

**§ 22C-2-1.**

Unless the article:

(a) "Authority" article one of the  
(b) "Cost" total of all costs all works and including:

(1) Development

(2) Architect

(3) Acquisition including the elements;

(4) Site preparation, construction

(5) The real development of interest on fund the project is the project in require; and

(6) Other reasonable and

(c) "Fund" article as it in Act, 33 U.S.C. § 300f through issued to comp

(d) "Instrument" designated by ing the fund p Federal Safety or other federal

(e) "Local public service mental authority corporation in

(f) "Project" or outside this



AT A CIRCUIT COURT CONTINUED AND HELD FOR LOGAN COUNTY, AT  
THE COURT HOUSE THEREOF, ON TUESDAY, JULY 15th, A. D. 1947.  
HONORABLE C. C. CHAMBERS, JUDGE OF SAID COURT, PRESENT AND  
PRESIDING.

IN RE: INCORPORATION OF THE TOWN OF CHAPMANVILLE,  
IN CHAPMANVILLE DISTRICT, LOGAN COUNTY,  
WEST VIRGINIA.

This day came Ernest Dent, George S. Chapman, and J. W. Barker, petitioners in the above cause, and filed with this Court their petition, with its exhibits, asking said Court to grant unto the citizens living in the territory, as laid out and described in a certain map and survey filed in this cause and marked Exhibit No. 1, a certificate of incorporation of such territory into a town by the name of Chapmanville.

And said matter coming on to be heard upon the aforesaid petition and its exhibits filed in this cause and upon the argument of counsel on the question of said incorporation, and the Court being of the opinion that the law, as set out in Chapter 8, Article 2 of the Code of West Virginia (Michie, 1943), regulating such matters, has been complied with by said petitioners, doth hereby grant the relief asked for in said petition, and doth direct the Clerk of this Court to issue a Certificate of Incorporation of such territory into a town by the name of Chapmanville, and doth further direct said Clerk to issue a Certificate of Incorporation of such town as prescribed by Section 8, Article 2, Chapter 8 of the Code of West Virginia (Michie, 1943) which said Certificate shall embrace the following described boundary or territory, situate in Chapmanville District in said County,

BEGINNING at a stake on the East side of State Route 10 at a culvert where the state road crosses the Peter Fry Branch of the Guyandotte River; thence N 2° 35' E 80 feet to a stake on the left (West) bank of Peter Fry Branch; thence up Peter Fry Branch N 48° E 433 feet to a stake; thence S 30° 30' E 2200 feet to a stake; thence S 11° 20' W 715 feet across the county road to a stake; thence S 46° 45' W 795 feet across the

Kanawha Branch of the Guyandotte River to a stake; thence S 0° 30' W 1630 feet across the Fowler Branch of the said river to a stake; thence S 71° 45' W 855 feet to a stake; thence 29° 30' W 825 feet to a stake; thence S 73° W 380 feet across the Chesapeake and Ohio Railroad to a stake on the East bank of the said river; thence N 41° (48') W 700 feet to a stake on the East bank of said river; thence N 16° 45' W 790 feet to a stake on the East bank of said river; thence N 25° 30' E 2850 feet along the East bank of said river to a stake by the South side of the bridge which crosses said river to the Crawley Creek road; thence N 80° W 1038 feet across said river and along the South side of the said Crawley Creek road to a stake; thence N 6° 45' W 1160 feet across the said Crawley Creek road to a stake on the South bank at the bend of said river; thence N 80° 30' E 730 feet to a stake on the South bank at the bend of said river; thence N 76° 30' E 803 feet across said river to the place of beginning, comprising an area of 236.8 acres more or less. T4 29 01

And it appearing to the satisfaction of the Court that all the provisions of Chapter 8, Article 2 of the Code of West Virginia (Michie, 1943) have been complied with by the applicants for said incorporation, said town is duly authorized, within the corporate limits aforesaid, to exercise all the corporate powers conferred by the said chapter, from and after the date of said certificate.

And from and after the date of such Certificate, the territory embraced within the boundary mentioned in said Certificate shall be an incorporated town by the name specified in said notice and Certificate.

It is further ordered that J. W. Barker, C. A. Talbert, and S. A. Ferrell, three legal voters residing within the above-described territory, be and they are hereby appointed as commissioners, to act as such at the first election of officers to be held in said Town of Chapmanville, which said election shall be held within sixty (60) days of the said Certificate of Incorporation, within the corporate limits of said town, at such time and place as may be fixed by said commissioners after giving the notice prescribed by Section 2, Article 3, Chapter 8, of the West Virginia Code (Michie, 1943).



STATE OF WEST VIRGINIA  
COUNTY OF LOGAN, TO-WIT:

I, Zeva Dingess, Clerk of the Circuit Court of Logan County,  
state aforesaid, do hereby certify that the foregoing is a true and correct  
copy as fully as the same appears of record and on file in my said office.

Given under my hand and seal of said court this the 27th  
day of July, 1956.

Zeva Dingess, Clerk

By Edith Jane White Deputy

NOTICE

All persons residing within the limits of the territory hereinafter described are hereby notified that on the 16th day of July, 1947, the undersigned persons will apply by petition to the Circuit Court of Logan County, West Virginia, for a certificate of incorporation as a town by the name of Chapmanville of the territory hereinafter described, situate in Chapmanville District, Logan County, West Virginia:

BEGINNING at a stake on the east side of State Route 10 at a culvert where the State road crosses the Peter Fry Branch of the Guyandotte River; thence N 8° 33' E 80 feet to a stake on the left (west) bank of Peter Fry Branch; thence up Peter Fry Branch N 48° E 488 feet to a stake; thence S 30° 30' E 2200 feet to a stake; thence S 11° 20' W 715 feet across the County road to a stake; thence S 48° 45' E 795 feet across the Kanawha Branch of the Guyandotte River to a stake; thence S 0° 30' W 1680 feet across the Fowler Branch of the said river to a stake; thence S 71° 45' W 855 feet to a stake; thence S 29° 30' W 825 feet to a stake; thence S 73° W 380 feet across the Chesapeake and Ohio Railroad to a stake on the East bank of the said river; thence N 41° 45' W 700 feet to a stake on the East bank of said river; thence N 16° 45' W 790 feet to a stake on the east bank of said river; thence N 25° 30' E 2880 feet along the East bank of said river to a stake by the South side of the bridge which crosses said river to the Crawley Creek road; thence N 80° W 1038 feet across said river and along the South side of the said Crawley Creek road to a stake; thence N 6° 45' W 1180 feet across the said Crawley Creek road to a stake on the South bank at the bend of said river; thence N 80° 30' E 730 feet to a stake on the South bank at the bend of said river; thence N 76° 30' E 803 feet across said river to the place of beginning, comprising an area of 236.8 acres, more or less.

An accurate survey and map of the proposed corporation limits, showing the sources and distances of the boundaries thereof and the amount of territory contained therein, and an accurate census of the resident population of such territory as of the 16 day of May, 1947, have been left at Dent's Grocery, where they may be examined by all persons interested in this application at all reasonable hours until July 8, 1947.

You are further notified that on the 8th day of July, 1947, all of the qualified voters who have resided within the limits of the proposed corporation for at least sixty days prior to that date will meet at the Chapmanville High School to vote upon the question of such incorporation. The polls will open at 6:30 o'clock ~~and close at 7:30 o'clock P.M.~~

Given under our hands this the 3 day of June, 1947.

Ernest Dent  
Ernest Dent

George S. Chapman  
George S. Chapman

J. W. Barker  
J. W. Barker

...incorporation

...under the seal of the State of West Virginia, to wit:  
Perrell, was this day filed, showing that a majority of all the qualified

BEGINTING at a stake on the East side of State Route 10 at a culvert where the state road crosses the Peter Fry Branch of the Guyandotte River; thence N 2° 35' E 80 feet to a stake on the left (West) bank of Peter Fry Branch; thence up Peter Fry Branch N 40° E 425 feet to a stake; thence S 30° 30' E 2,000 feet to a stake; thence S 11° 20' W 716 feet across the county road to a stake; thence S 46° 46' W 796 feet across the Kanawha Branch of the Guyandotte River to a stake; thence S 0° 30' W 1,000 feet across the Fowler Branch of the said river to a stake; thence S 71° 45' W 855 feet to a stake; thence S 20° 30' W 600 feet to a stake; thence S 75° W 580 feet across the Chesapeake and Ohio Railroad to a stake on the East bank of the said river; thence N 41° 45' W 700 feet to a stake on the East bank of said river; thence S 19° 45' W 790 feet to a stake on the East bank of said river; thence N 25° 30' E 1,816 feet to a stake on the East bank of said river to the Crawley Creek road; thence N 0° W 100 feet across said river and along the South side of the said Crawley Creek road to a stake; thence N 67° 45' W 110 feet across the said Crawley Creek road to a stake on the South bank at the bend of said river; thence E 80° 30' E 750 feet to a stake on the South bank at the bend of said river; thence N 70° 30' E 803 feet across said river to the place of beginning, comprising an area of 236.6 acres, more or less.

have voted in due form of law, in favor of the incorporation of the Town of Chapmansville, in the County of Logan, bounded as herein set forth. And as it appears to the satisfaction of the court that all of the provisions of Chapter 8 of the Code of West Virginia (Michie, 1943) have been complied with by the applicants for said incorporation, said town is a body corporate, duly authorized within the corporate limits aforesaid, or as otherwise provided, to exercise all the corporate powers conferred by the said Code from and after the date of this certificate.

Given under my hand this \_\_\_\_\_ day of July, 1947.

Clerk of the Circuit Court of Logan County, West Virginia.  
By \_\_\_\_\_

original

CERTIFICATE OF INCORPORATION

A certificate under the oath of J. W. Barker, C. A. Talbert, and S. A. Ferrell, was this day filed, showing that a majority of all the qualified voters residing in the following boundary, to-wit;

BEGINNING at a stake on the East side of State Route 10 at a culvert where the state road crosses the Peter Fry Branch of the Guyandotte River; thence N 2° 35' E 80 feet to a stake on the left (West) bank of Peter Fry Branch; thence up Peter Fry Branch N 48° E 433 feet to a stake; thence S 30° 30' E 2200 feet to a stake; thence S 11° 20' W 715 feet across the county road to a stake; thence S 45° 45' W 795 feet across the Kanawha Branch of the Guyandotte River to a stake; thence S 0° 30' W 1630 feet across the Fowler Branch of the said river to a stake; thence S 71° 45' W 855 feet to a stake; thence S 29° 30' W 825 feet to a stake; thence S 73° W 380 feet across the Chesapeake and Ohio Railroad to a stake on the East bank of the said river; thence N 41° 45' W 700 feet to a stake on the East bank of said river; thence N 16° 45' W 790 feet to a stake on the East bank of said river; thence N 25° 30' E 2850 feet along the East bank of said river to a stake by the South side of the bridge which crosses said river to the Crawley Creek road; thence N 80° W 1038 feet across said river and along the South side of the said Crawley Creek road to a stake; thence N 6° 45' W 1160 feet across the said Crawley Creek road to a stake on the South bank at the bend of said river; thence N 80° 30' E 730 feet to a stake on the South bank at the bend of said river; thence N 76° 30' E 803 feet across said river to the place of beginning, comprising an area of 236.8 acres, more or less;

have voted in due form of law, in favor of the incorporation of the Town of Chapmanville, in the County of Logan, bounded as herein set forth. And as it appears to the satisfaction of the court that all of the provisions of Chapter 8 of the Code of West Virginia (Michie, 1943) have been complied with by the applicants for said incorporation, said town is a body corporate, duly authorized within the corporate limits aforesaid, or as otherwise provided, to exercise all the corporate powers conferred by the said chapter from and after the date of this certificate.

Given under my hand this 15 day of July, 1947.

*Simon A. Dargatzis*

Clerk of the Circuit Court of Logan  
County, West Virginia.

By T. Eda Teller Deputy

By adoption of the following ordinances the Town of Chapmanville, West Virginia does by such adoption repeal all ordinances heretofore adopted. reference is made to minutes of Town of Chapmanville for adoption of this Comprehensive Code of Ordinances.

## CHAPTER ONE

### General Provisions

#### Sec. 1-1 How ordinances designated and cited

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "The Ordinances of the Town of Chapmanville, West Virginia", and may be so cited.

#### Sec. 1-2 Definitions and rules of construction

In the construction of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the council or unless the context clearly requires otherwise:

**Town.** The words "the Town" or this Town shall mean the Town of Chapmanville, in the County of Logan and State of West Virginia, except as otherwise provided.

**Computation of time.** The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day be Sunday or a legal holiday, that shall be excluded.

**Council.** Town council. The words "the council" or the term "town council" shall mean "the council of the Town of Chapmanville".

**County.** The words "the county" or "this county" shall mean the County of Logan, in the State of West Virginia, except as otherwise provided.

**Gender.** A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

**Land.** "Land" and "real estate" includes rights and easements of an incorporated nature.

**Month.** The word "month" shall mean a calendar month.

**Number.** A word importing the singular number only may extend and be applied to several persons or things as well as to one person or thing; a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

**Oath.** The word "oath" shall be construed to include an affirmation in all cases in which by law, and affirmation may be submitted or substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed". Or, and, "Or" may be read "and", and "and" may be read "or", if the sense requires it.

**Owner.** The word "owner", applied to any building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or part of such building or land.

Person. The word "person" shall extend and be applied to firms, partnerships, associations, bodies politic and corporate, or any other group acting as a unit, as well as to individuals.

Personal property include every species of property except real property, as herein defined.

Preceding: following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real, personal and mixed property, estates and interest.

Real property shall include lands, tenements and hereditaments.

Shall. The word "shall" is mandatory and not merely directory.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curb line, or the lateral lines of a roadway where there is no curb, and the adjacent property line, intended for the use of pedestrians.

Signature or subscription includes a mark when the person cannot write.

State. The words "state" or "this state" shall mean the State of West Virginia.

Street. The word "street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges, and the approaches thereto and all other public thoroughfares in the town, and shall mean the entire width thereof between abutting property lines; it shall be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the council.

Tenant or occupant. The word "tenant" or "occupant", applied to a building or land, shall include any person who occupies the whole or part of such building or land, whether alone or with others.

Time. Words used in the past tense or present tense include the future as well as the past and present.

Written, in writing. "Written" or "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year, and the word "year" alone shall be equivalent of the expression "year of our Lord".

Sec. 1-3 Effect of repeal or expiration of ordinance.

The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any offense committed, or penalty or punishment incurred, before the repeal took effect, or the ordinance expired, save only that the proceedings thereafter had shall conform as far as practicable to the ordinances in force at the time such proceedings take place, unless otherwise expressly provided.

Sec. 1-4 Provisions considered as continuations of existing ordinances.

The provisions appearing in those ordinances, so far as they are the same as those of former ordinances included herein, shall be considered as continuations thereof and not as new enactments and all former ordinances not appearing herein shall be and hereby are repealed.

Sec. 1-5 Catchlines of sections.

The catchlines of the several sections of these ordinances typed as headings are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless so provided shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

Sec. 1-6 Severability of ordinances.

It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses and phrases of these ordinances are severable, and if any phrase, clause, sentence, paragraph, section or chapter of these ordinances shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remainder of these ordinances, since the same would have been enacted by the council without the incorporation in these ordinances of any unconstitutional or invalid portions.

Sec. 1-7 Official Town time.

Whenever any time or hour of the day is mentioned in any chapter of these ordinances, or in any ordinance of the Town hereafter adopted, the time or hour shall be construed to mean Eastern Standard Time, or Daylight Saving Time if then in use in the Town, and the Eastern Standard Time, or Daylight Saving Time if then in use in the town is hereby adopted as the official standard time of the town.

Sec. 1-8 Official copy of ordinances to be kept in town hall..

One copy of these of these ordinances shall be certified by the town Recorder as correct and official and shall be placed and kept permanently on file in the office of the town hall. It shall be unlawful for any person to remove such copy of the ordinances from the town hall. Any person violating this section shall be guilty of a misdemeanor.

Sec. 1-9 Sale of ordinances

The town recorder is hereby authorized to sell any copies of these ordinances, at such price as may be fixed by resolution of the council.



CHAPTER TWO  
ADMINISTRATION

Article 1. In General

Sec. 1--City solicitor to hold position of city attorney.

Article 2. City Council

Sec. 1--Where regular and special meetings held.

All meetings of the city council, regular or special, shall be held in the Town Hall Building, except as otherwise directed by council upon notice given.

Sec. 2--When regular meetings held.

The council shall its regular meetings on the second and fourth Mondays of each month at 7:30 P.M., except as otherwise provided by council upon notice given as provided in these ordinances. In the event the second or fourth Monday falls on a holiday, the meeting shall be held on the following day.

Sec. 3--Calling special meetings; transaction of business at special meeting.

The mayor may call a special meeting of the council by giving at least twenty-four hour's written notice to each member of the council and by posting the notice in at least three public places, which notice shall be posted at least twenty-four hours before the meeting. Any three councilmen may call a special meeting by giving twenty-four hours written notice to the mayor and council and by posting the notice in at least three public places at least twenty-four hours before the meeting. The notice for a special meeting shall state the purpose for which the meeting is called and no business shall be transacted at a special meeting except that business which is stated in the special call.

Sec. 4--Time of filing ordinances to be submitted to council.

All ordinances to be submitted for approval or disapproval of the council shall be filed with the town clerk not less than five days before such submission.

Sec. 5--Departure from order of business.

There shall be no departure from the order of business, as set out in these ordinances except upon unanimous consent of the members of the council present and voting.

Sec. 6--Suspension of rules.

No rule of order of the council shall be suspended except by consent of a majority of the members of the council present and voting. Any such suspension of rules may be made upon a motion.

Sec. 7--Order of business generally.

At every regular meeting of the council the order of business shall be as follows:

- a. Roll call
- b. Reading of minutes
- c. Reading of Town financial report

- d. Miscellaneous and unfinished business.
- e. Petitions and communications
- f. Reports from city officials
- g. Original resolutions, orders and ordinances

**Sec. 8--Special order of business.**

When any matter is made the special order for a future meeting, it shall at such meeting take priority over all other business, except the reading of the minutes of the previous meeting.

**Sec. 9--Procedure in absence of quorum.**

If a quorum fail to attend a meeting with thirty minutes after the appointed time for such meeting, those present may adjourn to such time as they deem proper, after the names of those present shall have been entered on the journal.

**Sec. 10--Enforcement of rules; preservation of decorum.**

The mayor shall enforce the rules of the council and preserve order and decorum.

**Sec. 11--Decision on questions of order.**

The mayor shall decide questions of order and may, without vacating his chair, give his reasons for his decisions.

From any such decision of the chair an appeal may be made to the council, the question being, "Shall the decision of the chair be sustained as the decision of the council?" Upon such appeal, no debate shall be allowed, if it refers to a question of decorum; but, if it relates to the priority of business or to the relevancy or applicability of propositions, the appeal may be debated.

**Sec. 12--Statement of questions; declaration of results.**

Questions shall be distinctly put substantially in the following form, namely: "As many as agree that, etc. (as case may be), say 'aye' and after the affirmative vote is given: "Those opposed say 'no'. The mayor shall declare all votes.

**Sec. 13--Members not to withdraw.**

After a member of the council has, at any meeting been recorded as present, he shall not, without permission of the council, absent himself from such meeting until its adjournment.

**Sec. 14--Conduct of members.**

Every member of the council shall confine himself to the question before the council and avoid personal, or indecorous language. No discussion of a sectarian or political nature shall be allowed. No member shall interrupt another while speaking, except to make a point of order, the point to be briefly stated to the presiding officer. No member shall, while the council is sitting, interrupt or hinder its business by standing, moving about, talking, expressing approval or disapproval of any of the proceedings or by any conduct tending to disorder or confusion.

Sec. 14--Recognition of members.

When two members of the council rise at the same time, the mayor shall name the one to speak. In all cases, the member of the council first rising and addressing the chair shall speak first.

Sec. 15--Limitation on number and length of speeches.

No member of the council shall speak more than once on the same question until every member choosing to speak shall have done so, nor more than twice, nor for a longer time than fifteen minutes on any question, without permission of the council.

Sec. 16--Calling members to order.

If, in speaking, any member of the council transgress the rules of the council, the mayor shall call him to order. If there be no appeal, the decision of the chair shall be submitted to. If the decision be in favor of the member called to order, he may proceed; if otherwise, he shall not proceed, except by leave of the council.

Sec. 17--Addresses by nonmembers.

No person who is not a member of the council shall orally address it, until leave to do so has been applied for, through a member of the council, and granted by it, or until invited so to do by the presiding officer.

Sec. 18--Motions--Generally.

When a motion is made and seconded, it shall be stated by the presiding officer before it is debated. A motion may be withdrawn by the mover, with consent of the second, at any time before it is decided, amended or otherwise acted upon by the council.

Sec. 19--Amendments to be relevant.

No motion different from that under consideration shall be admitted under color of amendment.

Sec. 20--Same--Precedence.

When a question is under debate, no motion shall be entertained, unless specially provided for, except the following, which shall take precedence in the order given:

- a. To adjourn, to be made without preliminary remarks and decided without debate.
- b. To lay on the table, to be decided without debate.
- c. For the previous question, to be decided without debate.
- d. To postpone, either indefinitely or to a certain day or hour.
- e. To refer or recommit.
- f. To substitute or amend.
- g. To adopt or approve.

Sec. 21--When motion to adjourn in order.

A motion to adjourn shall always be in order, except when a member of the council has the floor, when the council is engaged in voting, when the previous question has been ordered, or when

the motion to adjourn has been put and lost and no other business has intervened.

Sec. 22--Same--Previous question.

Any member who obtains the floor during debate, and submits no other motion or remark, may move for the previous question, which motion, if seconded, shall forthwith be put to the council. The previous question shall be in this form: "Shall the main question now be put?" If carried, its effect shall be to end all debates and bring the council to a direct vote upon a motion to commit, if pending; then upon pending amendment, if any; and then, upon the main question. If the motion for the previous question be not carried, debate may continue as if the motion had not been made.

Sec. 23--Same--To reconsider.

In all cases a motion to reconsider will be entertained only when made by a member who voted with the prevailing side. A majority of those present can reconsider any vote, but the motion to do so shall be made at the same session of the council during which such vote was taken. A motion to reconsider shall have precedence over all other questions, and when it has once been put and lost, it shall not be renewed.

Sec. 24--Same--To lay on the Table.

A three-fifths vote of the members of the council present at any meeting of the council shall be required for the adoption or passage of the parliamentary motion "to lay on the table" as employed or applicable in the conduct of meetings and affairs of the council.

Sec. 25--Voting procedure; interested members not to vote.

On the call of any member of the council, the vote on any question may be taken by ayes and noes, and recorded; provided the demand be made before other business has been taken up. A member who is present and fails to vote when the ayes and noes are taken, shall be entered on the journal as present and not announcing his vote. No member who has an immediate personal or pecuniary interest in the result of the question shall either vote or be counted upon it.

Sec. 26--Recordation of dissent.

Any member of the council shall have the liberty to dissent from or protest against, any ordinance, resolution or order of the council, and have the reason of his dissent entered upon the record.

Sec. 27--Robert's Rules of Order.

The proceedings of the council, except as otherwise provided, shall be governed by Robert's Rules of Order.

Article 3. Town Owned Vehicles and Mobile Equipment.

Sec. 1--Display name of Town

All town-owned motor vehicles and mobile equipment shall

TOWN OF CHAPMANVILLE

First Reading:

9/11/97

Second Reading:

9-25-97

Adopted:

9-25-97

AN ORDINANCE TO AMEND CHAPTER TWO OF THE TOWN OF  
CHAPMANVILLE TO CHANGE THE TIME FOR THE REGULAR MONTHLY MEETING  
OF THE TOWN OF CHAPMANVILLE.

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF CHAPMANVILLE:

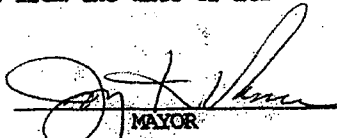
That effective upon the adoption of this ordinance that the  
Council of the Town of Chapmanville shall have one regular  
meeting per month which shall be held on the second Thursday  
of each month at 7:00 p.m.

This ordinance shall be effective from the date of its  
adoption.

ADOPTED:

FILED:

RECORDED:

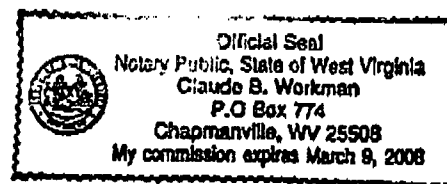
  
MAYOR

  
RECORDER

**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

I Jerry Price, Jr. do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
*mayor for the Town of Chapmanville*

\_\_\_\_\_ to the best of my skill and judgement *SO HELP ME GOD.*

**Print Name and Address:**Jerry Price, Jr.PO Box 372Chapmanville, WV 25508

(Signature of affiant) \_\_\_\_\_

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 2007.

Claude Workman



**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

I Claude B. Workman do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
recorder for the Town of Chapmanville

\_\_\_\_\_ to the best of my skill and judgement **SO HELP ME GOD.**

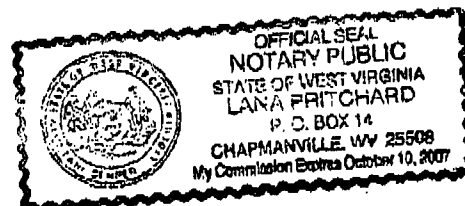
Print Name and Address:

Claude B. WorkmanPO Box 774Chapmanville, WV 25508

(Signature of affiant)

Claude Workman

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 2007.

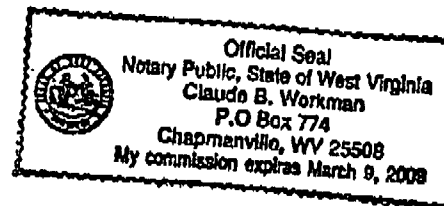
Lana Pritchard

**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

I Philip Meade do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
councilman for the Town of Chapmanville

\_\_\_\_\_ to the best of my skill and judgement *SO HELP ME GOD.*

Print Name and Address:

Philip MeadePO Box 762Chapmanville, WV 25508

(Signature of affiant) Philip S. Meade

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 2007

Claude Workman



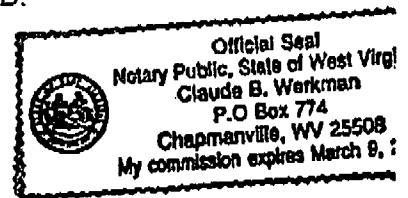


**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

I Anita Hagerty do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
council woman for the Town of Chapmanville.

\_\_\_\_\_ to the best of my skill and judgement **SO HELP ME GOD.**

Print Name and Address:

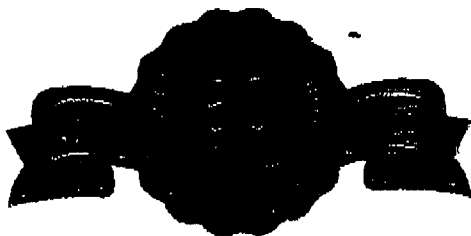
Anita HagertyPO Box 2860Chapmanville, WV 25508

(Signature of affiant)

A handwritten signature in cursive script, appearing to read "Anita Hagerty", written over a horizontal line.

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 2007.

A handwritten signature in cursive script, appearing to read "Claude B. Werkman", written over a horizontal line.



**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

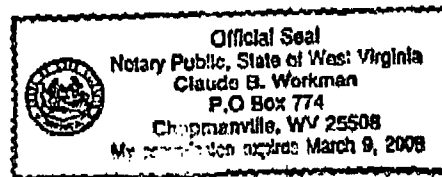
I James "Tony" Robison do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
councilman for the Town of Chapmanville

\_\_\_\_\_ to the best of my skill and judgement *SO HELP ME GOD.*

Print Name and Address:

James "Tony" RobisonPO Box 4717Chapmanville, WV 25508(Signature of affiant) *James A. Robison*

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 2007.

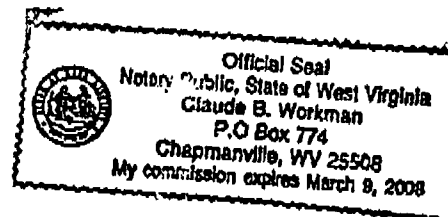
*Claude B. Workman*

**OATH OF OFFICE AND CERTIFICATE****STATE OF WEST VIRGINIA****COUNTY OF** Logan **TO-WIT**

I Jeremy Farley do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_  
councilman for the Town of Chapmanville

\_\_\_\_\_ to the best of my skill and judgement *SO HELP ME GOD.*

Print Name and Address:

Jeremy Farley505 Church StreetChapmanville, WV 25508

(Signature of affiant)

Jeremy E. Farley

Subscribed and sworn to before me, in said County and State, this 16  
day of July, 20  .

Claude B. Workman

## OATH OF OFFICE AND CERTIFICATE

STATE OF WEST VIRGINIA

COUNTY OF Lager TO-WIT

I Todd Ellis do solemnly swear that I will support the  
Constitution of The United States of America and the Constitution of the State of West  
Virginia, and that I will faithfully discharge the duties of the office of \_\_\_\_\_

Chapmanville Town Council

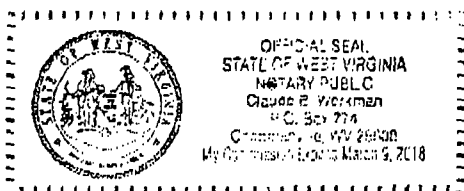
\_\_\_\_\_ to the best of my skill and judgement SO HELP ME GOD.

Print Name and Address:

Ryan Todd Ellis  
122 Division St  
Chapmanville WV 25508

(Signature of affiant) Ryan Todd Ellis

Subscribed and sworn to before me, in said County and State, this 11th  
day of January, 20 10.

Claude Workman



## WEST VIRGINIA

Infrastructure & Jobs Development Council

Gov. Joe Manchin, III  
Chairman

August 4, 2010

Kenneth Lowe, Jr.  
Public Member

David "Bones" McComas  
Public Member

Ron Justice  
Public Member

James W. Ellars, P.E.  
Executive Director

Barbara J. Pauley  
Administrative Secretary

Michael Turner, Chairman  
Chapmanville Water and Sewer Board  
329 Tiger Circle  
Chapmanville, WV

Re: Chapmanville Water and Sewer Board  
Sewer Project 2010S-1199  
WDA GAN (Revised)

Dear Mr. Turner:

At its August 4, 2010 meeting, the West Virginia Infrastructure and Jobs Development Council (Infrastructure Council) voted to approve that the Town of Chapmanville pursue a \$320,000 WDA GAN to be taken out with a Governor's Special Appropriation grant.

If you have any questions regarding this matter, please contact Jim Ellars at 304-558-4607 (X201).

Sincerely,

Kenneth Lowe, Jr.

cc: Mike Johnson, P.E., DEP (*via e-mail*)  
Chris Jarrett, Executive Director, WDA (*via e-mail*)  
Fred Hypes, P.E., Dunn Engineers, Inc. (*via e-mail*)

WDA-SF  
(03/10)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), and the governmental agency designated below (the "Governmental Agency").

**TOWN OF CHAPMANVILLE (2010S-1199)**  
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 22C, Article 1 of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered to make loans to governmental agencies for the acquisition or construction of water development projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State of West Virginia (the "State") to acquire, construct, improve, operate and maintain a water development project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a water development project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the “Application”), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by Section 5 of the Act and having available sufficient funds therefor, the Authority is willing to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Supplemental Fund of the Authority, subject to the Governmental Agency’s satisfaction of certain legal and other requirements of the Authority’s water development loan program (the “Program”) as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Governmental Agency and the Authority hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms “Authority,” “cost,” governmental agency,” “water development project,” “wastewater facility” and “water facility” have the definitions and meanings ascribed to them in the Act.

1.2 “Consulting Engineers” means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto.

1.3 “Loan” means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.4 “Local Act” means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.5 “Local Bonds” means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined,

to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.6 “Local Statute” means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.7 “Operating Expenses” means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.8 “Project” means the water development project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds or being or having been constructed by the Governmental Agency in whole or in part with the proceeds of bond anticipation notes or other interim financing, which is to be paid in whole or in part with the net proceeds of the Local Bonds.

1.9 “System” means the water development project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.10 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things



necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property is approved by the Authority.

2.4 The Governmental Agency agrees that the Authority and its duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental Agency further agrees that the Authority and its duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority, acting by and through its Director or his duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority such documents and information as it may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and its agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or shall have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Authority and shall verify or shall have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds is outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the

completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10th of each month to the Authority.

2.13 The Governmental Agency shall serve the additional customers at the location(s) as set forth in Schedule X. The Governmental Agency shall not reduce the amount of additional customers served by the project without the prior written approval of the WDA Board. Following completion of the Project the Governmental Agency shall certify to the Authority the number of customers added to the System.

2.14 The Governmental Agency shall perform an annual maintenance audit which maintenance audit shall be submitted to the WDA and the Public Service Commission of West Virginia.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority

shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) No Loan shall be made for the purpose of refinancing any outstanding long-term indebtedness of a Governmental Agency unless an opinion of counsel is received by the Authority to the effect that such refinancing is permitted by the Act;

(e) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority shall have received a certificate of the Consulting Engineers to such effect;

(f) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the West Virginia Infrastructure and Jobs Development Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(h) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(i) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority, to such effect; and

(j) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of water development projects and satisfactory to the Authority, to such effect, such certificate to be in form and substance satisfactory to the Authority, and evidence satisfactory to the Authority of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Authority.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Authority for loans from the Program to finance water development projects and that the obligation of the Authority to make any such loan is subject to the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local

Bonds unless and until it has available funds sufficient to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available. Additionally, the Governmental Agency recognizes that the Authority will purchase the Local Bonds only with funds from the Program and not with funds from any other loan programs of the Authority.

## ARTICLE IV

### Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Authority:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues will be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document, as reflected on the Schedule X attached hereto, and beginning seven (7) months prior to the first date of payment of interest on the Local Bonds and thirteen (13) months prior to the first date of payment of principal of the Local Bonds, respectively, to provide debt service on the Local Bonds by depositing in a sinking fund one-sixth (1/6) of the interest payment next coming due on the Local Bonds and one-twelfth (1/12) of the principal payment next coming due on the Local Bonds and, beginning thirteen (13) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety or other security instrument) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) (or such other amount as shall be acceptable to the Authority and as shall fund the Reserve Account

over not more than ten (10) years) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project, shall operate and maintain the System in good condition and, to the extent applicable, in compliance with, among other state and federal standards, the water quality standards established by the West Virginia Bureau for Public Health (the "BPH"), the West Virginia Department of Environmental Protection (the "DEP") and the United States Environmental Protection Agency (the "EPA"), shall permit the BPH, the DEP and EPA to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the

System at any reasonable time following completion of construction of the Project and commencement of operation thereof, and shall, as a condition precedent to the Authority's making the Loan, have obtained, among other permits required, permits from the BPH, the DEP and the EPA, if required;

(iv) That, except as otherwise required by State law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;



(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, except for accrued interest and capitalized interest, if any, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency shall not authorize redemption of any Local Bonds by it without the written consent of the Authority and except in compliance with the restrictions contained in this Loan Agreement;

(xvi) That, to the full extent permitted by applicable law and the rules and regulations of the PSC, the Governmental Agency shall terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xvii) That, if required by the Authority, the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the Authority's bonds;

(xviii) That the Governmental Agency shall provide the Authority with annual financial information and such other information as is necessary for the Authority to meet its ongoing disclosure requirements;

(xix) That the Governmental Agency shall have obtained the certificate of the Consulting Engineers in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xx) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xxi) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xxii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the

Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xxiii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting “gross proceeds” of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request, or, if applicable, the Governmental Agency shall annually furnish to the Authority such information with respect to the Governmental Agency’s use of the proceeds of the Local Bonds and any additional information requested by the Authority;

(xxiv) That the Governmental Agency shall obtain the written approval of the Authority before expending any proceeds of the Local Bonds available due to bid/construction/project underruns, including the “contingency” as set forth in the final Schedule A attached to the certificate of the Consulting Engineers;

(xxv) That the Governmental Agency shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project;

(xxvi) That, to the extent required by law, the Governmental Agency shall secure the approval of the Authority and all other state agencies having jurisdiction before applying for federal assistance for pollution abatement in order to maximize the amounts of such federal financial assistance received or to be received for all water development projects in the State of West Virginia;

(xxvii) That, as a condition precedent to the Authority’s making the Loan, the Governmental Agency shall deliver to the Authority a tax and non-arbitrage certificate or a certificate with respect to the used of proceeds of the Local Bonds satisfactory to the Authority; and

(xxviii) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the “West Virginia Jobs Act”) and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or

will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor ("DOL"); and (IV) the Governmental Agency will file with the DOL and the Authority copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted or enacted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority.

4.3 The principal payments of the Loan shall be made by the Commission annually on the days and in the years provided in Schedule X hereto. The interest payments on the Loan shall be made by the Commission semiannually as provided in said Schedule X.

4.4 The Loan shall bear interest from the date of the delivery to the Authority of the Local Bonds until the date of payment thereof, at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 As long as the Authority is the owner of any of the Local Bonds outstanding, the Governmental Agency shall not redeem any of such Local Bonds outstanding without the written consent of the Authority.

## ARTICLE V

### Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in any payment to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, plus 2%, from the date of the default until the date of the payment thereof. The defaulted interest shall be paid from the first deposits made by the Governmental Agency to the Commission.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under Section 7 of the Act, including, without limitation, the right to impose, enforce and collect charges of the System.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby acknowledges to the Authority its understanding of the provisions of the Act, vesting in the Authority certain powers, rights and privileges with respect to water development projects in the event of default by the Governmental Agency in the terms and covenants of this Loan Agreement, and the Governmental Agency hereby covenants and agrees that, if the Authority should hereafter have recourse to said rights and powers, the Governmental Agency shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of this Loan Agreement.

6.2 The Governmental Agency hereby warrants and represents that all information provided to the Authority in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority shall have the right to cancel all or any of its obligations under this Loan Agreement if (a) any representation made to the Authority by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.3 The Governmental Agency hereby agrees to repay on or prior to the Date of Loan Closing any moneys due and owing by it to the Authority for the planning or design of the Project, and such repayment shall be a condition precedent to the Authority's making the Loan.

6.4 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.5 Notwithstanding Section 6.4, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.6 The Governmental Agency hereby agrees to give the Authority prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.7 The Governmental Agency hereby agrees to file with the Authority upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule A to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority.

7.3 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.4 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or

other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.5 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.6 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.7 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.8 This Loan Agreement shall terminate upon the earlier of:

(i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Authority if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

(ii) termination by the Authority pursuant to Section 6.3 hereof; or

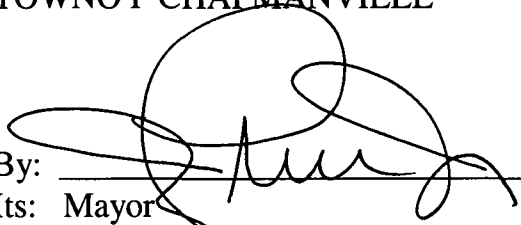
(iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority.



IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be executed by their respective duly authorized officers as of the date executed below by the Authority.

TOWN OF CHAPMANVILLE

(SEAL)


By:   
Its: Mayor  
Date: August 13, 2010

Attest:

  
Its: Recorder

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

(SEAL)

By:   
Its: Executive Director  
Date: August 13, 2010

Attest:

  
Its: Secretary-Treasurer

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEERS

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), dated \_\_\_\_\_.

2. The Bonds are being issued for the purposes of (i) \_\_\_\_\_, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the

Schedule A attached hereto as Exhibit A and my firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof,<sup>2</sup> the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule A attached hereto; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[SEAL]

\_\_\_\_\_  
By: \_\_\_\_\_  
West Virginia License No. \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup>If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of \_\_\_\_\_, Esq.] and delete "my firm has ascertained that."

<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of \_\_\_\_\_ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
“Governmental Agency”), a \_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the “Loan Agreement”), between the Governmental Agency and the West Virginia Water Development Authority (the “Authority”) and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, \_\_\_\_\_ (the “Local Bonds”), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with interest payable semiannually on April 1 and October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, at the rate of \_\_% per annum, and with principal payable annually on October 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, all as set forth in the “Schedule Y” attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) \_\_\_\_\_, and  
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the “Local Statute”), and the bond \_\_\_\_\_ duly adopted or enacted by the Governmental Agency on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted by the Governmental Agency on \_\_\_\_\_ (collectively, the “Local Act”), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to

maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Governmental Agency without the consent of the Authority.

3. The Governmental Agency is a duly organized and validly existing \_\_\_\_\_, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

## EXHIBIT C

### MONTHLY FINANCIAL REPORT

**Name of Governmental Agency** \_\_\_\_\_  
**Name of Bond Issue(s)** \_\_\_\_\_  
**Type of Project** \_\_\_\_\_ **Water** \_\_\_\_\_ **Wastewater** \_\_\_\_\_  
**Fiscal Year** \_\_\_\_\_ **Report Month** \_\_\_\_\_

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
<b>1. Gross Revenues</b>	_____	_____	_____	_____
<b>2. Operating Expenses</b>	_____	_____	_____	_____
<b>3. Bond Payments:</b>				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development	_____	_____	_____	_____
Authority				
Rural Utilities Service	_____	_____	_____	_____
Economic Development				
Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
<b>4. Renewal and Replacement Fund Deposits</b>	_____	_____	_____	_____

\_\_\_\_\_  
**Name of Person Completing Form**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Telephone**

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.

Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.

Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.

Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

**The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**



EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

Total: \$\_\_\_\_\_

Reserve Account: \$\_\_\_\_\_

Witness my signature this \_\_\_\_ day of\_\_\_\_\_.

[Name of Governmental Agency]

By: \_\_\_\_\_  
Authorized Officer

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds \$320,000  
Purchase Price of Local Bonds \$320,000

Interest on the Local Bonds is payable on April 1 and October 1 in each year, beginning on April 1, 2011, after delivery of the Local Bonds to the Authority on the amounts advanced thereunder, until the Local Bonds are paid in full, at the rate of 3% per annum. Principal of the Local Bonds is payable on August 11, 2013.

The Local Bonds are fully registered in the name of the Authority as to interest and principal. The Local Bonds shall grant the Authority a first lien on the future grant receipts received by the Governmental Agency.

## SCHEDULE Y

### DEBT SERVICE SCHEDULE

To come after completion of Project.

## SCHEDULE Z

None.

**THE TOWN OF CHAPMANVILLE**

**COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)**

**NOTE ORDINANCE**

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## THE TOWN OF CHAPMANVILLE

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE PUBLIC SEWERAGE FACILITIES OF THE TOWN OF CHAPMANVILLE AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF CHAPMANVILLE OF NOT MORE THAN \$400,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO TIME AND ISSUANCE OF SUCH NOTES; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF CHAPMANVILLE:

### ARTICLE I

#### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the “Note Legislation”) is enacted pursuant to the provisions of Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the “Act”), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The Town of Chapmanville (the “Issuer”) is a municipal corporation and political subdivision of the State of West Virginia in Logan County of said State.

B. The Issuer deems it necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed additions and improvements



to the wastewater portion of the Issuer's Combined Waterworks and Wastewater system consisting of installation of a grinder pumping station along with approximately 4,000 LF of 1 – 1/2" forcemain to provide service to Marshall University Medical and Clinical Education Center (the "Project") (the new system of the Issuer, the Project and any further extensions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans have heretofore been filed with the Recorder of the Issuer.

C. It is deemed necessary for the Issuer to issue its Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) in the total aggregate principal amount of not more than \$400,000 as a single note (the "Series 2010 A Note"), to temporarily finance a portion of the costs of acquisition and construction of the Project and paying certain costs of issuance.

D. The period of usefulness of the Project after completion is not less than 5 years.

E. It is in the best interests of the Issuer that its Series 2010 A Note be sold to the Authority pursuant to the terms and provisions of a loan agreement by and between the Issuer and the Authority, as hereinafter defined, in form satisfactory to the respective parties, to be approved hereby if not previously approved by resolution of the Issuer.

F. The Issuer anticipates receiving grants from the West Virginia Infrastructure Fund, a West Virginia legislative grant, or a governor's partnership grant (the "Grants") that will permanently finance the Project. The proceeds of the Grants shall secure the payment of the Notes.

G. The Issuer has complied with all requirements of West Virginia law, the Loan Agreement (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2010 A Note, or will have so complied prior to issuance of any thereof including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure & Jobs Development Council.

H. Pursuant to the Act, the Issuer has heretofore established a Water and Sewer Board and the Water and Sewer Board has petitioned the Governing Body to issue the Series 2010 A Note for the purposes set forth herein.

I. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Note Constitutes Contract. In consideration acceptance of the Series 2010 A Note by the Registered Owners of the o time, this Note Legislation shall be

deemed to be and shall constitute a contract between the Issuer and such Noteholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Noteholders of any and all of such Series 2010 A Note, all which shall be of equal rank and without preference, priority or distinction between any one Note and any other Notes and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

“Act” means, collectively, Chapter 8, Article 20 and Chapter 22C, Article 1 the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Authority” means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2010 A Note, or any other agency, board or department of the State that succeeds to the functions of the Authority.

“Authorized Officer” means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

“Board” or “Sanitary Board” means the Sanitary Board of the Issuer.

“Bondholder,” “Noteholder,” “Holder of the Bonds,” “Holder,” “Registered Owner” any similar term whenever used herein with respect to an outstanding Bond, Note, Notes or Bonds, means the person in whose name such Bond is registered.

“Bond Year” means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

“Closing Date” means the date upon which there is an exchange of the Series 2010 A Note for all or a portion of the proceeds of the Series 2010 A Note from the Authority.

“Code” means the Internal Revenue Code of 1986 as amended, and the Regulations.

“Commission” means the West Virginia Municipal Bond Commission or any other agency of the State of West Virginia that succeeds to the functions of the Commission.

“Consulting Engineers” means Dunn Engineers, Inc., or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting

Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

“Costs” or “Costs of the Project” means those costs described in Section 1.02D hereof to be a part of the costs of acquisition and construction of the Project.

“Depository Bank” means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

“FDIC” means the Federal Deposit Insurance Corporation and any successor to the functions of the FDIC.

“Fiscal Year” means each 12-month period beginning on July 1 and ending on the succeeding June 30.

“Governing Body” means the Town Council of the Issuer, as it may now or hereafter be constituted.

“Government Obligations” means direct obligations of, or obligations the timely payment of the principal of and interest on which is guaranteed by, the United States of America.

“Grants” means any grants to be committed to the Issuer as a part of the permanent financing of the Project from the sources described in Section 1.02F hereof or any other source the Issuer may obtain.

“Gross Revenues” means the aggregate gross operating and non-operating revenues of the System, as hereinafter defined, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that “Gross Revenues” does not include any gains from the sale or other disposition of or from any increase in the value of capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof) or any Tap Fees, as hereinafter defined.

“Herein,” “hereto” and similar words shall refer to this entire Note Legislation.

“Independent Certified Public Accountants” means any certified public accountant or firm certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

“Issuer” means The Town of Chapmanville, a municipal corporation and political subdivision of the State of West Virginia, in Logan County, West Virginia, and, unless the

context clearly indicates otherwise, includes the Governing Body and/or the Sanitary Board of the Issuer.

“Loan Agreement” means the Loan Agreement heretofore entered, or to be entered into, by and between the Issuer and the Authority providing for the purchase of the Series 2010 A Note, the form of which shall be approved and the execution and delivery by the issuer authorized and directed or ratified by the Supplemental Resolution.

“Mayor” means the Mayor of the Issuer.

“Net Proceeds” means the face amount of the Series 2010 A Note, plus accrued interest and premium, if any, less original issue discount, if any.

“Net Revenues” means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

“Notes” means, collectively, the Series 2010 A Note and, where appropriate, any notes on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer,

“Note Legislation,” “Ordinance,” “Note Ordinance” or “Local Act” means this Note Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

“Operating Expenses” means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses (other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, Registrar and Paying Agent or Paying Agents, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that “Operating Expenses” does not include payments on account of the principal of or redemption premium, if any, or interest on the Notes, charges for depreciation, losses from the sale or other disposition of or any decrease in the value of capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

“Outstanding” when used with reference to Notes and as or any particular date, describes all Notes theretofore and thereupon being authenticated and delivered except (i) any Note cancelled by the Registrar, at or prior to said date; (ii) any Note for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Note deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Holders, any Note registered to the Issuer.

“Parity Bonds” means additional Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof

“Paying Agent” means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority.

“Prior Bonds” means, the Issuer’s Combined Water and Sewer Revenue Bonds, Series 1986 B, dated March 25, 1986; Combined Water and Sewer Revenue Bonds, Series 1992, dated October 23, 1992; and Combined Water and Sewer Revenue Bonds, Series 1999 A, dated August 24, 1999.

“Prior Ordinances” means the Bond Ordinances authorizing the Prior Bonds.

“Project” means the Project as described in Section 1.02B hereof “Qualified Investments” means and includes the following:

- (a) Government Obligations;
- (b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;
- (c) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;
- (d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;
- (e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements or similar banking arrangements, fully secured by investments of the types described in paragraphs (a) through (e) above or fully insured by the FDIC, with member banks of the Federal Reserve system or banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12. Article 6C of the West Virginia Code of 1931, as amended, including, without limitation, authorized pools of investments operated by such State Board of Investments; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Recorder" means the Recorder of the Issuer.

"Registered Owner," "Bondholder," "Holder" or any similar term means whenever used herein with respect to an outstanding Note or Notes, the person in whose name such Note is registered.

"Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund continued by Section 5.01 hereof.

"Revenue Fund" means the Revenue Fund continued by Section 5.01 hereof.

“Series 2010 A Note” means the Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) authorized by this Ordinance.

“Series 2010 A Note Fund” means the Series 2010 A Note Fund established by Section 5.02 hereof.

“Series 2010 A Notes Construction Trust Fund” means the Series 2010 A Notes Construction Trust Fund established by Section 5.01 hereof.

“State” means the State of West Virginia.

“Supplemental Resolution” means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article “the,” refers specifically to the supplemental resolution authorizing the sale of the Series 2010 A Note; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2010 A Note, and not so included may be included in another Supplemental Resolution.

“Surplus Revenues” means the Net Revenues not required by the Note Legislation to be set aside and held for the payment of or security for the Notes or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

“System” means the complete public combined waterworks and sewerage system of the Issuer as presently existing in its entirety or any integral part and shall include the Project and any further extensions, additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

“Tap Fees” means the fees, if any, paid by prospective customers of the System in order to connect thereto.

“West Virginia Infrastructure Fund” means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

**ARTICLE II**  
**AUTHORIZATION OF ACQUISITION AND CONSTRUCTION**  
**OF THE PROJECT**

Section 2.01. Authorization of Acquisition and Construction of the Project.

There is hereby authorized and ordered the acquisition and construction of the Project at an estimated cost of not to exceed \$400,000, which will be paid from proceeds of the Series 2010 A Note, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2010 A Note hereby authorized shall be applied as provided in Article VI hereof. The Issuer has received or will receive bids and will enter into contracts for the acquisition and construction of the Project in an amount compatible with the financing plan submitted to the Authority.

The cost of the project is estimated not to exceed \$400,000, which will be obtained from the proceeds of the Series 2010 A Note to temporarily finance the Project.



**ARTICLE III**  
**AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND**  
**SALE OF NOTE; AUTHORIZATION AND EXECUTION**  
**OF LOAN AGREEMENT**

Section 3.01. Authorization of Note. For the purposes of capitalizing interest, temporarily paying Costs of the Project not otherwise provided for and paying certain costs of issuance and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2010 A Note of the Issuer. The Series 2010 A Note shall be issued as a single note, designated as "Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority)", in the principal amount of not more than \$400,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2010 A Note remaining after funding capitalization of interest, if any, shall be deposited in or credited to the Series 2010 A Bonds Construction Trust Fund established by Section 5.01 hereof

Section 3.02. Terms of Note. The Series 2010 A Note shall be issued in such principal amount; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2010 A Note shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2010 A Note shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2010 A Note shall initially be issued in the form of a single note, fully registered to the Authority, with a record of advances, representing the aggregate principal amount of the Series 2010 A Note, and shall mature in sixty (60) months or as provided in the Supplemental Resolution. The Series 2010 A Note shall be exchangeable at the option and expense of the Registered Owner for another fully registered Note or Notes of the same series in aggregate principal amount equal to the amount of said Note then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Note; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Notes, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Notes shall be dated and shall bear interest as specified in a Supplemental Resolution.

Section 3.03. Execution of Notes. The Series 2010 A Note shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2010 A Note shall cease to be such officer of the Issuer before the Series 2010 A Note so signed and sealed have been actually sold and delivered, such Note may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Note had not ceased to hold such office. Any Series 2010 A Note may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Note shall hold the proper office in the Issuer, although at the date of such Note such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2010 A Note shall be valid or obligatory for any purpose or entitled to any security or benefit under this Note Legislation unless and until the Certificate of Authentication and Registration on such Note, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Registrar. Any such executed Certificate of Authentication and Registration upon any such Note shall be conclusive evidence that such Note has been authenticated, registered and delivered under this Note Legislation. The Certificate of Authentication and Registration on any Series 2010 A Note shall be deemed to have been executed by the Registrar if manually signed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the notes issued hereunder.

Section 3.05. Negotiability. Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2010 A Note shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2010 A Note shall be conclusively deemed to have agreed that such Note shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2010 A Note remains outstanding, the Issuer, through the Registrar or its agent, shall keep and maintain books for the registration and transfer of such Note.

The registered Series 2010 A Note shall be transferable only upon the books of the Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2010 A Note are exercised, all Series 2010 A Notes shall be delivered in accordance with the provisions of this Note Legislation. All Series 2010 A Notes surrendered in any such

exchanges or transfers shall forthwith be cancelled by the Registrar. For every such exchange or transfer of Series 2010 A Notes, the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new note upon each exchange or transfer, and any other expenses of the Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Registrar shall not be obliged to make any such exchange or transfer of any Series 2010 A Note during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2010 A Note or, in the case of any proposed redemption of such Note, next preceding the date of the selection of Notes to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Note, Mutilated, Destroyed, Stolen or Lost. In case any Series 2010 A Note shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Note of the same series and of like tenor as the Note so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Note upon surrender and cancellation of such mutilated Note, or in lieu of and substitution for the Note destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Registrar may incur. All Notes so surrendered shall be cancelled by the Registrar and held for the account of the Issuer. If any such Note shall have matured or be about to mature, instead of issuing a substitute Note, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Note be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Note not to be Indebtedness of the Issuer. The Series 2010 A Note shall not, in any event, be or constitute corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the proceeds of a grant or grants made available to the Issuer subsequent to the issuance of the Note. No holder or holders of the Series 2010 A Note shall ever have the right to compel the exercise the taxing power of the Issuer to pay the Series 2010 A Note or the interest thereon.

Section 3.08. Note Secured by Pledge of Grant Proceeds. The payment of the debt service on the Series 2010 A Note shall be secured by a first lien on the Grant proceeds received by the Issuer subsequent to the issuance of the Note to permanently finance a portion of the costs of the Project.

Section 3.09. Delivery of Note. The Issuer shall execute and deliver the Series 2010 A Note to the Registrar, and the Registrar shall authenticate, register and deliver the Series 2010 A Note to the original purchasers upon receipt of the documents set forth below:

- A. If other than the Authority, a list of the names in which the Series 2010 A Note are to be registered upon original issuance, together with such taxpayer identification and other information as the Registrar may reasonably require;

- B. A request and authorization to the Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2010 A Note to the original purchasers;
- C. An executed and certified copy of the Note Legislation;
- D. An executed copy of the Loan Agreement; and
- E. The unqualified approving opinion of bond counsel on the Series 2010 A Note.

Section 3.10. Form of Note. The text of the Series 2010 A Note shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2010 A NOTE)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. A-1

\$\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That on this the \_\_\_\_ day of \_\_\_\_\_, 2010, THE TOWN OF CHAPMANVILLE, a municipal corporation and political subdivision of the State of West Virginia in Logan County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the -Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, on the maturity date of \_\_\_\_\_, 201\_\_.

This Note shall bear interest at the rate of \_\_\_\_%. The entire principal amount of this Note is payable in any coin or currency which, on the date of payment of such amount, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Note is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Note may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, dated \_\_\_\_\_, 2010.

This Note is issued (i) to temporarily pay a portion of the costs of acquisition and construction of extensions and improvements to the sewerage portion of the combined public waterworks and wastewater system of the Issuer (the "Project"); (ii) to capitalize interest on the Note; and (iii) to pay costs of issuance of the Note. Such combined public waterworks and

wastewater system, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Note Ordinance duly enacted by the Issuer on \_\_\_\_\_, 2010, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 2010 (collectively, the "Note Legislation"), and is subject to all the terms and conditions thereof. The Note Legislation provides for the issuance of additional notes under certain conditions, and such notes would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Note under the Note Legislation.

**THIS NOTE HAS NO LIEN ON THE GROSS OR NET REVENUES OF THE SYSTEM.**

This Note and the interest thereon are payable only from and secured by a first lien on the proceeds of a grant or grants made available to the Issuer subsequent to the issuance of the Note to permanently finance the costs of the Project. This Note does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except as set forth in the Note Ordinance.

Subject to the registration requirements set forth herein, this Note is transferable, as provided in the Note Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Note, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Note, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Note shall be applied solely to payment of the costs of the Project and costs of issuance described in the Note Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Note.

**IT IS HEREBY CERTIFIED, RECITED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and

manner as required by law, and that the amount of this Note, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

All provisions of the Note Legislation, resolutions and statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, THE TOWN OF CHAPMANVILLE has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Note to be dated the day and year first written above.

[SEAL]

---

Mayor

ATTEST

---

Recorder



## **CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This Note is one of the Series 2010 A Note described in the within-mentioned Note Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2010

UNITED BANK, INC., as Registrar

By: \_\_\_\_\_  
Its: Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
TOTAL		\$	

(Form of)  
ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within \_\_\_\_\_  
Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to  
transfer said Bond on the books kept for registration thereof with full power of substitution in the  
premises.

Dated: \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Note: Approval and Ratification of Execution of Loan Agreement. The Series 2010 A Note shall be sold to the Authority, pursuant the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "EXHIBIT A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver them to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and continued. The Loan Agreement, including all schedules and exhibits attached thereto, and is hereby approved and incorporated in this Note Legislation.

Section 3.12. Filing of Amended Schedule. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority a schedule for the Series 2010 A Note, the form of which will be provided by the Authority, setting forth the actual costs of the Project and sources of funds therefor.

**ARTICLE IV**  
**[RESERVED]**

**ARTICLE V**  
**FUNDS AND ACCOUNTS; SYSTEM. REVENUES AND APPLICATION THEREOF**

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created (or continued if established by the Prior Ordinances) with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund (established by the Prior Ordinances);
- (2) Renewal and Replacement Fund (established by the Prior Ordinances and continued hereby); and
- (3) Series 2010 Notes Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2010 A Note Fund.

Section 5.03. System Revenues. A. The Gross Revenues of the System shall be disposed of in accordance with the Prior Ordinances.

- (1) If the Prior Ordinances are no longer in effect the Issuer shall ensure that the following payment is made after payment of all Operating Expenses: the Issuer shall, on the first day of each month, from the monies remaining in the Revenue Fund, transfer to the Renewal and Replacement Fund, a sum equal to 2 ½% of the Gross Revenues each month (as previously set forth in the Prior Ordinances and not in addition thereto), exclusive of any payments for account of any Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System.

B. This note has no lien on the Gross Revenues or Net Revenues of the system. The Issuer shall remit to the Commission the principal and interest only upon receipt of a grant or grants made available to the Issuer subsequent to the issuance of the Note to permanently finance the costs of the Project.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2010 A Note Fund and created hereunder, and all amounts required for said account shall be remitted to the Commission by the Issuer at the times provided herein. All remittances

made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

C. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this paragraph, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

D. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or by other Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

E. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### APPLICATION OF NOTE PROCEEDS

Section 6.01. Application of Note Proceeds; Pledge of Unexpended Note Proceeds. From the monies received from the sale of the Series 2010 A Note, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2010 A Note, there shall be deposited with the Commission in the Series 2010 A Note Fund, the amount, if any, set forth in the Supplemental Resolution for capitalized interest.

B. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2010 A Note, such monies shall be deposited with the Depository Bank in the Series 2010 A Notes Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2010 A Note.

C. After completion of the construction of the Project, as certified by The Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2010 A Note shall be deposited into the Series 2010 A Note Fund to pay interest on the Series 2010 A Notes.

Section 6.02. Disbursements of Note Proceeds. The Issuer shall each month provide the Authority with a requisition for the costs incurred for the Project, together with such documentation as the Authority shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements of the proceeds of the Series 2010 A Note from the Series 2010 A Notes Construction Trust Fund shall be made only after submission to, and approval from, the Authority of a certificate, signed by an Authorized Officer, stating that:

- (1) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (2) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (3) Each of such costs has been otherwise properly incurred; and
- (4) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2010 A Notes Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.



Section 6.03. Additional Grant Anticipation Notes. In the event proceeds of the Grants are not sufficient or available on a timely basis to pay the Notes in full by the maturity date of the Notes, the Issuer covenants and agrees to issue and sell its additional grant anticipation notes in an amount sufficient to pay the Notes in full pursuant to the requirements of Section 10.01.

## **ARTICLE VII**

### **ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Note Legislation shall be and constitute valid and legally binding of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2010 A Note. In addition to the other covenants, agreements and provisions of this Note Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2010 A Note as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2010 A Note or the interest thereon is Outstanding and unpaid.

Section 7.02. Notes not to be Indebtedness of the Issuer. The Series 2010 A Note shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Note Legislation. No Holder or Holders of the Series 2010 A Note shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2010 A Note or the interest thereon.

Section 7.03. Note Secured by Pledge of Future Grant Proceeds. The payment of the Series 2010 A Note and any interest accrued therein shall be secured by a first lien on the Issuer's receipt of future grant or grants received to permanently finance a portion of the costs of the Project. It is anticipated that the Issuer will be the beneficiary of a grant or grants from the West Virginia Infrastructure and Jobs Development Council, West Virginia Legislative Grant or a Governor's Partnership grant, which grant proceeds is pledged to and will be used to pay the Series 2010 A Note and any interest accrued therein.

Section 7.04. Rates and Charges. The Series 2010 A Note is not secured by the Revenues of the System. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal and the Issuer shall provide an opinion of counsel to such effect. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement and the Issuer shall supply a certificate of certified public accountant to such effect.

So long as the Series 2010 A Note is outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Note Legislation and in compliance with the Loan Agreement. In the event the schedule of rates and charges initially established for the System in connection with the Series 2010 A Note shall

prove to be insufficient to produce the amounts required by this Note Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Note Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding the Issuer shall not sell the System unless it is in accordance with the Prior Ordinances. So long as the Series 2010 A Notes is outstanding and except as otherwise required by law or with the written consent of the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Notes Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2010 A Note Fund, or in the event the Authority is no longer a Holder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest on the Series 2010 A Note in accordance with Article X hereof. Any balance remaining after the payment of the Series 2010 A Note and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System,

Section 7.06. Issuance of Other Obligations Payable From the Proceeds of the Grants and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the proceeds of the Grants which rank prior to, or equally, as to lien on and source of and security for payment from such proceeds with the Series 2010 A Note. All obligations issued by the Issuer after the issuance of the Series 2010 A Note and payable from the grants, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from the proceeds of the Grants and in all other respects, to the Series 2010 A Notes; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or use or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2010 A Note, and the interest, any, thereon, upon any of the proceeds of the Grants pledged for payment of the Series 2010 A Note and the interest, if any, thereon in this Note Legislation, or upon the System or any part thereof

The Issuer shall give the Authority prior written notice of its issuance of any other obligations to be used for the System, payable from the Grants of the System or from any grants for the Project, or any other obligations related to the Project the System.

Section 7.07. Additional Parity Bonds. No additional Parity Bonds, payable out of the Grants of the System, shall be issued after the issuance of the Series 2010 A Note pursuant to this Ordinance, without the prior written consent of the Authority and without complying with the conditions and requirements herein provided.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing

and installing the Project. The Issuer shall permit the Authority, or its agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project; the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority, or agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Note issued pursuant to this Note Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the Public Service Commission of West Virginia and the Act. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by the Issuer. The Issuer shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of the Issuer shall be reported to such agent of the Issuer as the Governing Body shall direct.

The Issuer shall file with the Authority, or any other original purchaser of the Series 2010 A Note and shall mail in each year to any Holder or Holders of the Series 2010 A Note, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Note Legislation and the status of all said funds and accounts.
- (C) The amount of any Bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and, to the extent legally required, in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2010 A Note and shall submit the report to the Authority, or any other original purchaser of the Series 2010 A Note. Such audit report submitted to the Authority shall include a statement that notes whether the results of test disclosed instances of

noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer or the Board has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Authority, or its agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority, or its agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority with respect to the System pursuant to the Act.

Section 7.09. Rates. Prior to the issuance of the Series 2010 A Note, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges such purposes. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance described in Section 7.04.

Section 7.10. Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, and to any fielder of any Notes who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her, within 30 days of adoption thereof and shall make available such budgets and all resolutions authorizing increased

expenditures for operation and maintenance of the System at all reasonable times to any Holder of any Notes or anyone acting for and in behalf of such Holder of any Notes.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority by the 10<sup>th</sup> day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

Section 7.12. No Competing Franchise. To the extent legally allowable, the Issuer will not grant or cause, consent to or allow the granting of, any franchise or permit to any person, firm, corporation, body, agency or instrumentality whatsoever for the providing of any services which would compete with services provided by the System.

Section 7.13. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 20 days after the same shall become due and payable, the property and the owner thereof as well as the riser of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the

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Public Service Commission of West Virginia, discontinue and shut off the services of the System and any services and facilities of the water and sewer system, if so owned by the Issuer, to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of the System or the water and sewer system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law. If the water and sewer system is not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water and sewer, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders thereof.

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, the Board and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2010 A Note remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. The proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repairs and restoration of the damaged or destroyed properties or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Board, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the

Issuer, the prime contractor and subcontractors, as their interests appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer and the Board from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT OR COMPLETION BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Issuer or the Board having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

B. The Issuer shall require all contractors engaged in the construction of the Project furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of the contract.

The Issuer shall verify such bonds commencement of construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and

properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the Board, the prime contractor and all subcontractors, as their interests may appear. The Issuer shall verify such insurance prior to commencement of construction.

Section 7.16. Mandatory Connections. The mandatory use of the sewerage facilities portion of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of and the economy of the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the acquisition and construction of the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia necessary for the acquisition and construction of the Project and the operation of the System and all approvals of issuance of the Series 2010 A Note required by State law, with all requisite appeal periods having expired without successful appeal and the Issuer shall supply an opinion of counsel to such effect.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer and the Board shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. The Issuer and the Board also agree to comply with all applicable laws, rules and regulations issued by the Authority, or other federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.



Section 7.19. [RESERVED]

Section 7.20. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2010 A Note, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2010 A Note and shall be junior and subordinate to the statutory mortgage lien in favor of the Holders of the Prior Bonds.

Section 7.22. Contracts; Change Orders; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2010 A Note or immediately thereafter, enter into contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Authority for written approval. The Issuer shall obtain the written approval of the Authority before expending any proceeds of the Series 2010 A Note held in "contingency" as set forth in the Schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Authority before expending any proceeds of the Series 2010 A Note made available due to bid or construction or project overruns.

C. The Issuer shall list the funding provided by the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## **ARTICLE VIII**

### **INVESTMENT OF FUNDS: USE OF PROCEEDS**

Section 8.01. Investments. Any monies held as a part of the funds and accounts created by this Ordinance, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Ordinance, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank may make any and all investments permitted by this section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2010 A Note are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2010 A Note from gross income for federal income tax purposes.

Section 8.02. Certificate and Covenants as to Use of Proceeds. The Issuer shall deliver a certificate as to use of proceeds or other similar certificate to be prepared by nationally recognized bond counsel relating to restrictions on the use of proceeds of the Series 2010 A Note as a condition to issuance of the Series 2010 A Note. In addition, the Issuer covenants (i) to comply with the Code and all Regulations from time to time in effect and applicable to the Series 2010 A Note as may be necessary in order to maintain the status of the Series 2010 A Note as governmental notes; (ii) that it shall not take, or permit or suffer to be taken, any action with respect to the Issuer's use of the proceeds of the Series 2010 A Note which would cause any notes, the interest, if any, on which is exempt from federal income taxation under Section 103(a) of the Code, issued by the Authority, from which the proceeds of the Series 2010 A Note are derived, to lose their status as tax-exempt notes; and (iii) to take such action, or refrain from taking such action, as shall be deemed necessary by the Issuer, or requested by the Authority, to

ensure compliance with the covenants and agreements set forth in this Section, regardless of whether such actions may be contrary to any of the provisions of this Note Legislation.

The Issuer shall annually furnish to the Authority information with respect to the Issuer's use of the proceeds of the Series 2010 A Note and any additional information requested by the Authority.

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an “Event of Default” with respect to the Series 2010 A Note:

(1) If the Issuer receives the Grants in an amount sufficient to pay the entire principal amount of the Series 2010 A Note and fails to pay the entire principal amount of the Series 2010 A Note; or

(2) If default occurs in the Issuer or the Issue observance of any of the covenants, agreements or conditions on their respective parts relating to the Series 2010 A Note set forth in this Note Legislation, any supplemental resolution or in the Series 2010 A Note, and such default shall have continued for a period of 30 days after the Issuer or Board, as appropriate, shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Note; or

(3) If the Issuer or Board files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America; or

(4) If default occurs with respect to the Prior Bond Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Holder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Holders including the right to require the Issuer to perform its duties under the Act and the Note Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Notes; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Holders of the Notes, and (v) by action or bill in equity enjoin any acts in violation of the Note Legislation with respect to the Notes, or the rights of such Registered Owners.

Section 9.03. Appointment of Receiver. Any Registered Owner of a Note may, by proper legal action, compel the performance of the duties of the Issuer under the Note Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Notes, any Registered Owner of a Note shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer or the Board, with power to charge rates,

rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Notes and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Note Legislation and the Act.

The receiver so appointed shall forthwith, directly or by his or her or its agents and attorneys, enter into and upon and take possession of all facilities of said System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Notes and interest thereon and under any covenants of this Note Legislation for reserve, sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Note Legislation shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent default, any Registered Owner of any Notes shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers herein above conferred upon him or her or it, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Notes. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Notes and the curing and making good of any Event of Default with respect thereto under the provisions of this Note Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

**ARTICLE X**  
**PAYMENT OF NOTE**

Section 10.01. Payment of Series 2010 A Note. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2010 A Note, the principal of and interest due or to become due thereon at the times and in the manner stipulated therein and in this Note Legislation, then the pledge of Grant proceeds and other monies and securities pledged under this Note Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2010 A Note shall thereupon cease, terminate and become void and be discharged and satisfied.

## ARTICLE XI MISCELLANEOUS

Section 11.01. Amendment or Modification of Note Legislation. Prior to issuance of the Series 2010 A Note, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2010 A Note, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2010 A Note shall be made without the consent in writing of the Registered Owners of the Series 2010 A Note so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2010 A Note or the rate of interest thereon, or in the principal amount thereof or afflicting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2010 A Note required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Note Legislation may be amended without the consent of any Holder as may be necessary to assure compliance with Section 148(0) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2010 A Note from gross income of the holders thereof.

Section 11.02. Note Legislation Constitutes Contract. The provisions of the Note Legislation shall constitute a contract between the Issuer and the Registered Owners of the Notes, and no change, variation or alteration of any kind of the provisions of the Note Legislation shall be made in any manner, except as in this Note Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2010 A Note.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.06. Covenant of Due Procedure. Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full

compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body and the Issuer were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

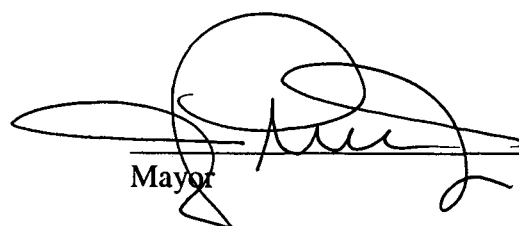
Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the Logan Banner a qualified newspaper published and of general circulation in The Town of Chapmanville. together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2010 A Note, and that any person interested may appear before the Governing Body upon a date certain, not less than ten clays subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on tile with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall he heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Passed on First Reading: June 14, 2010

Passed on Second Reading: July 12, 2010

Passed on Final Reading Following Public Hearing: August 9, 2010

  
Mayor

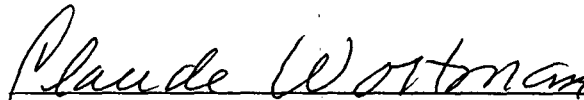


## CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of THE TOWN  
OF CHAPMANVILLE on the 9<sup>th</sup> day of August. 2010.

Dated: August 13, 2010.

[SEAL]

  
Recorder

## **EXHIBIT A**

**Loan Agreement included in note transcript as Document 2.2.**

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE TOWN OF CHAPMANVILLE COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH NOTES TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE NOTES.

WHEREAS, the Council (the "Governing Body") of the Town of Chapmanville (the "Issuer") has duly and officially adopted a Note Ordinance on July 12, 2010, effective August 9, 2010 (the "Ordinance"), entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE PUBLIC SEWERAGE FACILITIES OF THE TOWN OF CHAPMANVILLE AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE TOWN OF CHAPMANVILLE OF NOT MORE THAN \$400,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO TIME AND ISSUANCE OF SUCH NOTES; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF

SUCH NOTES AND ADOPTING OTHER PROVISIONS  
RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance when used herein;

WHEREAS, the Ordinance provides for the issuance of the Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), of the Issuer (the "Notes"), in the aggregate principal amount not to exceed \$400,000, and has authorized the execution and delivery of a loan agreement relating to the Notes, including all amendments and supplements (collectively, the "Loan Agreement"), by and among the Issuer and the West Virginia Water Development Authority (the "Authority"), all in accordance with Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"); and in the Ordinance it is provided that the exact principal amount, date, maturity date, interest rate, interest and principal payment dates, sale price and other terms of the Notes should be established by a supplemental resolution pertaining to the Notes; and that other matters relating to the Notes be herein provided for;

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Series 2010 A Notes is proposed to be purchased by the Authority pursuant to the Loan Agreement; and

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the exact principal amount, the date, the maturity date, the interest rate, the interest and principal payment dates, sale price and other terms of the Notes be fixed hereby in the manner stated herein, and that other matters relating to the Notes be herein provided for.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CHAPMANVILLE, WEST VIRGINIA, AS FOLLOWS:

Section 1. It is hereby found and determined that:

(A) The Notice of Public Hearing and Abstract of Note Ordinance (the "Notice") was duly published in The Logan Banner, a qualified newspaper of general circulation in the Issuer with the first publication thereof being on July 28, 2010, which first publication was not less than ten (10) days before the day set by the Ordinance and the Notice for the public hearing at which interested persons might appear before the Council of the Issuer and present protests and suggestions and with the last publication thereof being on August 4, 2010, which last publication date was prior to said date set by the Ordinance and the Notice for the public hearing, and a copy of the Affidavit of Publication reflecting such publications is incorporated herein by reference;

(B) In accordance with the Ordinance and the Notice, the Recorder has maintained in his or her office a certified copy of the Ordinance for review by interested persons during the regular office hours of such office;

(C) In Council chambers, Municipal Building, 329 West Tiger Lane, Chapmanville, West Virginia, on August 9, 2010, at 7:00 p.m., prevailing time, in accordance with the Ordinance and the Notice, the Council met for the purpose of hearing protests and suggestions regarding whether the Ordinance should be put into effect and heard all protests and suggestions with regard thereto;

(D) At the public hearing, no significant reasons were presented that would require modification or amendment of the Ordinance and no written protest with regard thereto was filed by 30 percent or more of the freeholders of the Issuer; and

(E) The Ordinance shall be put into effect as of the date hereof and the Notes contemplated thereby shall be issued, all as provided in the Ordinance and this Supplemental Resolution.

Section 2. Pursuant to the Note Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), of the Issuer, originally represented by a single Note, numbered AR-1, in the principal amount of \$320,000. The Notes shall be dated the date of delivery thereof, shall finally mature August 13, 2013, and shall bear interest at the rate of 3% per annum. The interest of the Notes is payable semi-annually on April 1, and October 1 of each year, commencing April 1, 2011, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Notes. On April 11, 2013, the entire principal amount is due. The Notes shall be subject to redemption upon the written consent of the Authority and upon payment of a redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the Registered Owner of the Notes.

Section 3. The proceeds of the Notes shall be advanced to the Issuer upon requisition from time to time. The Issuer shall pay interest on the interest payment dates, only on the amounts advanced on the Note at such interest payment date.

Section 4. All other provisions relating to the Notes and the text of the Notes shall be in substantially the form provided in the Ordinance.

Section 5. The Issuer does hereby ratify the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein on behalf of the Issuer are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the

Authority. The price of the Notes shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds will be advanced from time to time as requisitioned by the Issuer.

Section 6. The Issuer does hereby appoint and designate United Bank, Inc., Charleston, West Virginia, as Registrar (the "Registrar") for the Notes under the Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Notes, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein on behalf of the Issuer are hereby authorized, approved and directed.

Section 7. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Commission"), to serve as Paying Agent for the Notes under the Note Ordinance.

Section 8. The Issuer does hereby appoint and designate Logan Bank & Trust, Chapmanville, West Virginia, to serve as Depository Bank under the Note Ordinance.

Section 9. The proceeds of the Notes, as advanced from time to time, shall be deposited in or credited to the Series 2010 A Note Construction Trust Fund, as received from time to time for payment of Costs of the Project, including costs of issuance of the Notes.

Section 10. The Mayor and Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Notes hereby and by the Ordinance approved and provided for, to the end that the Notes may be delivered on or about August 13, 2010, to the Authority pursuant to the Loan Agreement.

Section 11. The acquisition, construction and financing of the Project in part with proceeds of the Notes is in the public interest, serves a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 12. The Issuer does hereby ratify, approve and accept all contracts relating to the financing, acquisition and construction of the Project.

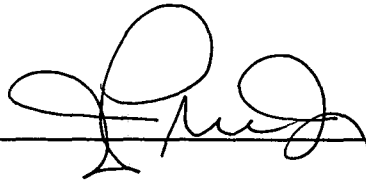
Section 13. The Issuer hereby determines to invest all moneys in the funds and accounts established by the Ordinance held by the Depository Bank until expended, in money market accounts secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such moneys to be invested in such money market accounts until further directed in writing by the Issuer.

Section 14. This Supplemental Resolution shall be effective immediately following adoption hereof.

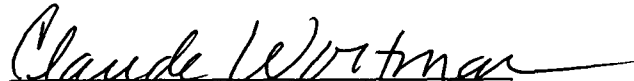
Adopted this 9<sup>th</sup> day of August, 2010.

[SEAL]

Mayor

A handwritten signature in black ink, appearing to be "F. R. J.", written over a horizontal line.

ATTEST:

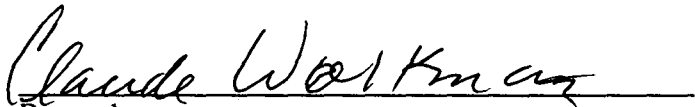
  
Recorder

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council  
of the Town of Chapmanville on the 9<sup>th</sup> day of August, 2010.

Dated this 13<sup>th</sup> day of August, 2010.

[SEAL]

  
Recorder



TOWN OF CHAPMANVILLE  
 COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
 SERIES 2010 A  
 (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

MINUTES ON ENACTMENT OF NOTE ORDINANCE, ADOPTION OF  
 SUPPLEMENTAL RESOLUTION AND RATIFYING FIRST DRAW RESOLUTION

On this 11<sup>th</sup> day of August, 2010, the undersigned duly elected Recorder of the Town of Chapmanville hereby certifies that the following is a true and correct excerpt of the minutes of a special meeting of the Town Council:

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The Town Council of the Town of Chapmanville met in special session, pursuant to notice duly posted, on the 9<sup>th</sup> day of August, 2010, in Chapmanville, West Virginia, at the hour of 7:00 p.m.

PRESENT:	Jerry Price, Jr.	-	Mayor
	Jeremy Farley	-	Council Member
	Phillip Meade	-	Council Member
	Anita Hagerty	-	Council Member
	James Robison	-	Council Member
	Todd Ellis	-	Council Member
	Claude Workman	-	Recorder

Jerry Price, Jr., Mayor, presided, and Claude Workman was the Recorder. The Mayor announced that a quorum of Council members was present and that the meeting was open for any business properly before it.

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Thereupon, the Mayor presented a proposed Note Ordinance in writing entitled:

ORDINANCE AUTHORIZING THE ACQUISITION AND  
 CONSTRUCTION OF CERTAIN EXTENSIONS,  
 ADDITIONS, BETTERMENTS AND IMPROVEMENTS  
 TO THE PUBLIC SEWERAGE FACILITIES OF THE  
 TOWN OF CHAPMANVILLE AND THE FINANCING OF  
 THE COST THEREOF, NOT OTHERWISE PROVIDED,

THROUGH THE ISSUANCE BY THE TOWN OF CHAPMANVILLE OF NOT MORE THAN \$400,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH NOTES; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO TIME AND ISSUANCE OF SUCH NOTES; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH NOTES; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH NOTES AND ADOPTING OTHER PROVISIONS RELATING THERETO.

and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was unanimously ordered that said Note Ordinance be adopted and be in full force and effect on and from the date hereof.

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Thereupon, the Mayor presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO THE PRINCIPAL AMOUNT, DATE, MATURITY DATE, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE TOWN OF CHAPMANVILLE COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY); AUTHORIZING AND APPROVING THE SALE AND DELIVERY OF SUCH NOTES TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; AND MAKING OTHER PROVISIONS AS TO THE NOTES.

and caused the same to be read and there was discussion. Upon motion duly made and

seconded, it was unanimously ordered that said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

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Next, the Mayor presented a first draw resolution that had been duly adopted by the Town of Chapmanville on August 13, 2010 in writing entitled:

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN  
OF CHAPMANVILLE APPROVING INVOICES  
RELATING TO THE DESIGN OF THE ACQUISITION  
AND CONSTRUCTION OF CERTAIN IMPROVEMENTS  
AND EXTENSIONS TO THE EXISTING PUBLIC SEWER  
FACILITIES OF THE TOWN AND AUTHORIZING  
PAYMENT THEREOF.

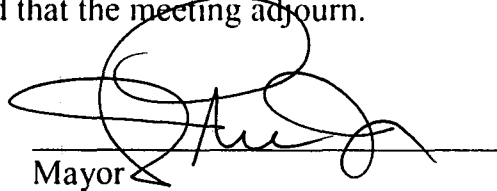
and caused the same to be read and there was discussion. Upon motion duly made and seconded, it was ordered and ratified that the Resolution be adopted and ratified by the Town Council of the Town of Chapmanville.

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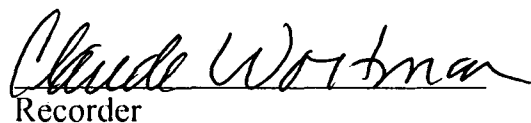
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There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting adjourn.



Mayor

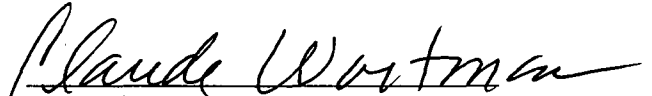


Recorder

CERTIFICATION

I hereby certify that the foregoing action of the TOWN OF CHAPMANVILLE remains in full force and effect and has not been amended, rescinded, superseded, repealed or changed.

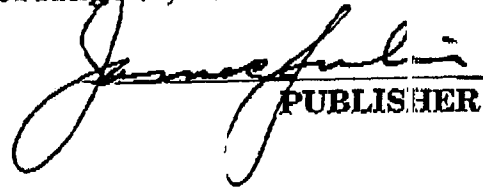
WITNESS my signature as of the date first written above.

  
Recorder

I, James C. Jenkins, publisher of THE LOGAN BANNER, a newspaper published in Logan County, West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s) on the following date(s):

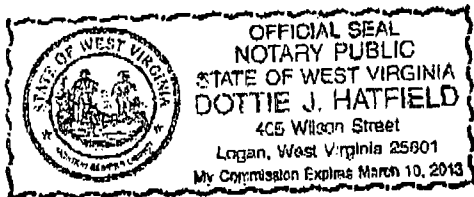
**July 28th, & August 4th, 2010**

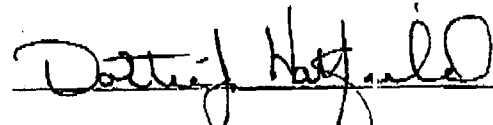
**Given under my hand this 9th day of August, 2010**

  
PUBLISHER

**State of West Virginia  
County of Logan, to-wit:**

**Subscribed and sworn before me this 9th day of August, 2010**



  
NOTARY PUBLIC

**Cost of Publication: \$ 126.62**

**COPY OF PUBLICATION**

**SEE ATTACHED**

**TOWN OF  
CHAPMANVILLE**  
**NOTICE OF PUBLIC  
HEARING AND  
ABSTRACT OF NOTE  
ORDINANCE**

Notice is hereby given to any person interested that on August 9, 2010, the Council of the Town of Chapmanville (the "Issuer") adopted an Ordinance which, among other things:

1. Authorized the design of the acquisition and construction of certain additions, betterments and improvements (the "Project") to the Issuer's existing public sewerage system (the "System") and the financing of the cost thereof, not otherwise provided, through the issuance of not more than \$400,000 in aggregate principal

amount of Combined Sewer and Water range in Grant Anticipation Note Series 2010-A. The Issuer, through the West Virginia Water Development Authority, the Notes described in and under the conditions set forth in the

2. Directed that the Ordinance abstracted Notes be issued in such principal amounts, bear interest at such rates, not exceeding the then legal maximum rate, payable monthly on such dates, mature on such dates, and in such amounts and redeemable, in whole or in part, as prescribed in a supplemental resolution, as to whether the above described Ordinance shall be put into effect.

3. Provided that the Notes shall not be of constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision of limitation, but shall be payable solely from the proceeds of any revenue bonds, refunding bonds or other obligations of the Issuer, issued subsequent to the issuance of the Notes and Surplus Revenues.

4. Established the events of default and the remedies of the registered owners of the Notes; provided for the modification or amendment of the Ordinance upon the terms and conditions

above. Any person interested may appear before the Council of the Town of Chapmanville at a regular meeting on August 9, 2010, at 7:00 p. m. in the Council Chambers, Municipal Building, Chapmanville, West Virginia, and present protests and be heard as to whether the above described Ordinance shall be put into effect.

A certified copy of the Ordinance as adopted by the Council is on file with the Recorder for review by interested persons during the office hours of the Municipal Building.

Claude Workman  
Recorder

A-1



SPECIMEN

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
THE TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE, SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

No. A-1

\$320,000

KNOW ALL MEN BY THESE PRESENTS: That on this the 11<sup>th</sup> day of AUGUST, 2010, THE TOWN OF CHAPMANVILLE, a municipal corporation and political subdivision of the State of West Virginia in Logan County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of THREE HUNDRED TWENTY THOUSAND DOLLARS (\$320,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, on the maturity date of August 13 2013.

This Note shall bear interest at the rate of 3%. The entire principal amount of this Note is payable in any coin or currency which, on the date of payment of such amount, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Note is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of United Bank, Inc., Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Note may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority, and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, dated August 13, 2010.



This Note is issued (i) to temporarily pay a portion of the costs of acquisition and construction of extensions and improvements to the sewerage portion of the combined public waterworks and wastewater system of the Issuer (the "Project"); (ii) to capitalize interest on the Note; and (iii) to pay costs of issuance of the Note. Such combined public waterworks and wastewater system, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the "Act"), and a Note Ordinance duly enacted by the Issuer on August 9, 2010, and a Supplemental Resolution duly adopted by the Issuer on August 9, 2010 (collectively, the "Note Legislation"), and is subject to all the terms and conditions thereof. The Note Legislation provides for the issuance of additional notes under certain conditions, and such notes would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Note under the Note Legislation.

THIS NOTE HAS NO LIEN ON THE GROSS OR NET REVENUES OF THE SYSTEM.

This Note and the interest thereon are payable only from and secured by a first lien on the proceeds of a grant or grants made available to the Issuer subsequent to the issuance of the Note to permanently finance the costs of the Project. This Note does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except as set forth in the Note Ordinance.

Subject to the registration requirements set forth herein, this Note is transferable, as provided in the Note Legislation, only upon the books of the Registrar by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Note, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Note, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Note shall be applied solely to payment of the costs of the Project and costs of issuance described in the Note Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Note.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Note do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Note, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

All provisions of die Note Legislation, resolutions and statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note to the same extent as if written fully herein.

[Remainder of Page Intentionally Blank]

A-1

IN WITNESS WHEREOF, THE TOWN OF CHAPMANVILLE has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Note to be dated the day and year first written above.

[SEAL]

**SPECIMEN**  
Mayor

ATTEST

**SPECIMEN**  
*Claude W. Homan*  
Recorder

A-1

**CERTIFICATE OF AUTHENTICATION AND REGISTRATION** **SPECIMEN**

This Note is one of the Series 2010 A Note described in the within-mentioned Note Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: August 13, 2010

UNITED BANK, INC. as Registrar

By: *[Signature]* **SPECIMEN**

Its: Authorized Officer

A-1

SPECIMEN

EXHIBIT ARECORD OF ADVANCES

	<u>AMOUNT</u>	<u>DATE</u>		<u>AMOUNT</u>	<u>DATE</u>
(1)	\$25,000	August 13, 2010	(19)	\$	
(2)	\$		(20)	\$	
(3)	\$		(21)	\$	
(4)	\$		(22)	\$	
(5)	\$		(23)	\$	
(6)	\$		(24)	\$	
(7)	\$		(25)	\$	
(8)	\$		(26)	\$	
(9)	\$		(27)	\$	
(10)	\$		(28)	\$	
(11)	\$		(29)	\$	
(12)	\$		(30)	\$	
(13)	\$		(31)	\$	
(14)	\$		(32)	\$	
(15)	\$		(33)	\$	
(16)	\$		(34)	\$	
(17)	\$		(35)	\$	
(18)	\$		(36)	\$	
		TOTAL	\$		

SPECIMEN

(Form of)  
ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto  
\_\_\_\_\_ the within \_\_\_\_\_  
Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to  
transfer said Bond on the books kept for registration thereof with full power of substitution in the  
premises.

Dated: \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
In the presence of:  
  
\_\_\_\_\_

NOTE REGISTER

2.8

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

<u>Note Number</u>	<u>Principal Amount</u>	<u>Date of Note</u>
No. AR-1	\$320,000	August 13, 2010

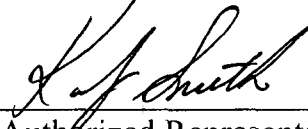
NO WRITING ON THIS NOTE REGISTER EXCEPT BY THE REGISTRAR

Name of Registered Owner:

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Signature of Registrar:

United Bank, Inc.

  
\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

GENERAL CERTIFICATE ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. SIGNATURES AND DELIVERY
6. PUBLIC SERVICE COMMISSION ORDER
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. PUBLICATION AND PUBLIC HEARING ON ORDINANCE
11. INSURANCE
12. LOAN AGREEMENT
13. TRUTH AND ACCURACY OF DOCUMENTS
14. SPECIMEN NOTE
15. NOTES PROCEEDS
16. CONFLICT OF INTEREST
17. VERIFICATION OF SCHEDULE A
18. PROCUREMENT OF ENGINEERING SERVICES
19. COUNTERPARTS

We, the undersigned MAYOR and the undersigned RECORDER of the Town of Chapmanville, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) (the "Notes"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance duly passed by the Issuer on July 12, 2010, effective August 9, 2010, the Supplemental Resolution duly adopted by the Issuer on August 9, 2010, relating to the Notes (collectively, the "Ordinance"), and the Loan Agreement entered into among the Issuer and the West Virginia Water Development Authority (the "Authority"), dated August 13, 2010, for the Notes (the "Loan Agreement").



2. NO LITIGATION: No controversy or litigation of any nature is now pending or, to the knowledge of any of the undersigned, threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System; nor affecting the validity of the Notes or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer or the title of the members or officers of the Issuer or the Council thereof to their respective offices; nor questioning any proceedings of the Issuer taken with respect to the issuance, sale or delivery of the Notes, the acquisition and construction of the Project, the operation of the System, the collection or use of the revenues of the System, or the pledge of the proceeds of Grants for the Notes.

3. GOVERNMENTAL APPROVALS AND BIDDING: All applicable and necessary approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System and the issuance of the Notes have been duly and timely obtained and remain in full force and effect, and competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery of the Loan Agreement by the Issuer. The Issuer has met all the conditions set forth in the Loan Agreement and will provide the financial, institutional, legal and managerial capabilities necessary to complete and operate the Project.

On the closing date, there will be outstanding obligations of the Issuer being the Combined Water and Sewer Revenue Bonds, Series 1986 B; Combined Water and Sewer Revenue Bonds, Series 1992; and Combined Water and Sewer Revenue Bonds, Series 1999 A which will be secured by a pledge of Net Revenues. The Series 2010 A Notes are secured by a pledge of the proceeds of future Grants.

5. SIGNATURES AND DELIVERY: The undersigned Mayor and Recorder are the duly elected or appointed, qualified and serving officers of the Issuer as indicated by the official titles opposite their signatures below, and were duly authorized to execute and seal the Notes for the Issuer. The seal impressed upon the Notes and this Certificate is the duly authorized, proper and only seal of the Issuer. On the date hereof, the undersigned Mayor did officially sign all of the Notes, consisting upon original issuance of a single Bond, dated the date hereof, by his or her manual signature; the undersigned Recorder did officially cause the seal of the Issuer to be affixed upon the Notes and to be attested by

{C1829616.1}

his or her manual signature; and the Registrar did officially authenticate and deliver the Notes to a representative of the Authority as the original purchaser of the Notes under the Loan Agreement.

6. PUBLIC SERVICE COMMISSION ORDER: The Issuer has filed information with the Public Service Commission of West Virginia (the "PSC") and taken all other action required to maintain the Final Order entered on August 9, 2010, in Case No. 10-1149-S-PC-CN, which states that the Project is a normal extension of the System, in full force and effect, and has taken all other action required by applicable law. The time for appeal of such Final Order has not expired prior to the date hereof. However, the parties to such Final Order have stated that they do not intend to appeal such Final Order. The Issuer hereby certifies that it will not appeal such Final Order.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Town of Chapmanville", and it is a municipal corporation of the State of West Virginia in Logan County of said State. The governing body of the Issuer is its Council, consisting of five Council members, the Mayor and the Recorder, all duly elected, qualified and acting, whose names and dates of commencement and termination of their current terms of office are listed below:

<u>Office</u>	<u>Name</u>	<u>Date Of Commencement Of Office</u>	<u>Date Of Termination Of Office</u>
Mayor	Jerry Price, Jr.	July 1, 2007	June 30, 2011
Recorder	Claude Workman	July 1, 2007	June 30, 2011
Council Member	Phillip Meade	July 1, 2007	June 30, 2011
Council Member	Anita Hagerty	July 1, 2007	June 30, 2011
Council Member	James Robison	July 1, 2007	June 30, 2011
Council Member	Jeremy Farley	July 1, 2007	June 30, 2011
Council Member	Todd Ellis	January 11, 2010	June 30, 2011

The duly appointed and acting Attorney for the Issuer is Robert B. Kuenzel II, Esquire, Logan, West Virginia.

8. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the acquisition and construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the Issuer, and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that would adversely affect or interfere in any way with the use thereof for such

purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation, are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Notes.

9. MEETINGS: All actions, ordinances, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the Issuer in any way connected with the issuance of the Notes and the acquisition, construction, operation and financing of the Project or the System were authorized or adopted at meetings of the Council duly and regularly or specifically called and held pursuant to all applicable statutes, including, without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and the rules of procedure of Council, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Council was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

10. PUBLICATION AND PUBLIC HEARING ON ORDINANCE: Upon adoption of the Ordinance, an abstract thereof, determined by the Council to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in The Logan Banner, a qualified newspaper of general circulation in the Issuer, no newspaper being published therein, together with a notice to all persons concerned, stating that the Ordinance had been adopted and that the Issuer contemplated the issuance of the Notes described in the Ordinance, stating that any person interested may appear before the Council at the public hearing held at a regular meeting of the Council on August 9, 2010, at 7:00 p.m., prevailing time, in the Council Chambers, 329 West Tiger Lane, Chapmanville, West Virginia, and present protests, and stating that a certified copy of the Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Council and the Ordinance became finally adopted, enacted and effective as of the date of such public hearing and remains in full force and effect.

11. INSURANCE: The Issuer will maintain or, as appropriate, will require all contractors to maintain Worker's Compensation, public liability and property damage insurance, standard hazard insurance, builder's risk insurance, flood insurance and business interruption insurance, where applicable, in accordance with the Ordinance and the Loan Agreement.

12. LOAN AGREEMENT: As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statements of material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best

knowledge of the undersigned, no event affecting the Issuer has occurred since the date of the Loan Agreement, which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

13. TRUTH AND ACCURACY OF DOCUMENTS: The undersigned Mayor and the undersigned Recorder hereby certify that the copies of documents previously or on the date hereof certified by them as being true and accurate are true and accurate as of the date hereof and that none of such documents has been repealed, rescinded, amended or otherwise modified.

14. SPECIMEN NOTE: Attached hereto as Exhibit A is a specimen of the Bond which, except as to execution and authentication, is identical in all respects with the Bond this day delivered to the Authority and being substantially in the form prescribed in the Ordinance.

15. NOTES PROCEEDS: On the date hereof, the Issuer received \$500.00 from the Authority, being a portion of the principal amount of the Notes, and more than a de minimus amount of the proceeds of the Notes. The balance of the principal amount of the Notes will be advanced to the Issuer from time to time as acquisition and construction of the Project progresses.

16. CONFLICT OF INTEREST: No member, officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Notes, the Ordinance, and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

17. VERIFICATION OF SCHEDULE A: The final amended Schedule A attached to the Certificate of Consulting Engineer, with the signature of the Mayor and the Consulting Engineer, accurately represents the estimated costs of the Project, the sources of funds available to pay the costs of the Project, and the costs of financing of the Notes.


18. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Note.

19. COUNTERPARTS: This Certificate may be executed in counterparts and all counterparts shall be deemed to be the Certificate.

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[SEAL]

Signature



A handwritten signature in black ink, appearing to be 'J. M. ...', written over a horizontal line.

Alande Wortma

Aut 8/22

---

PSC Attorney  
(as to paragraph 6)

WITNESS our signatures and the official corporate seal of the Town of Chapmanville, West Virginia, on this 11<sup>th</sup> day of August, 2010.

[SEAL]

Signature

Official Title

\_\_\_\_\_

Mayor

\_\_\_\_\_

Recorder

\_\_\_\_\_

Attorney

H. Wyatt AL

PSC Attorney  
(as to paragraph 6)

## EXHIBIT A

Specimen Note included in transcript under Tab 10.

{C1829616.1}



3.2

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

CERTIFICATE AS TO USE OF PROCEEDS

On this 13<sup>th</sup> day of August, 2010, the undersigned Mayor of the Town of Chapmanville in Logan County, West Virginia (the "Issuer"), being the officials of the Issuer duly charged with the responsibility for the issuance of \$320,000 aggregate principal amount of Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), of the Issuer, dated August 13, 2010 (the "Notes" or the "Series 2010 A Notes"), hereby certify as follows:

1. I am the officer of the Issuer duly charged with the responsibility of issuing the Notes. I am familiar with the facts, circumstances and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Note Ordinance duly enacted by the Issuer on August 9, 2010 (the "Note Ordinance"), authorizing the Notes.

2. This certificate may be relied upon as the certificate of the Issuer.

3. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on August 13, 2010, the date on which the Notes are to be physically delivered in exchange for a portion of the principal amount of the Notes, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

4. The Notes were sold on August 13, 2010, to the Authority, pursuant to a loan agreement dated August 13, 2010, by and among the Issuer and the Authority, for an aggregate purchase price of \$320,000 (100% of par value), at which time, the Issuer received \$25,000 from the Authority, being the first advance of the principal of the Notes. No accrued interest has been or will be paid on the Notes. The balance of the principal amount of the Notes will be advanced to the Issuer as acquisition and construction of the Project progresses.

5. The Notes are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the sewerage portion of the existing public combined waterworks and sewerage sewer system

of the Issuer (the "Project"); and (ii) paying costs of issuance of the Notes and related costs.

6. The Issuer shall, on the date hereof or immediately hereafter, enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Notes for the acquisition and construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Notes to expenditures for costs of the Project shall commence immediately and proceed with due diligence to completion and, with the exception of proceeds deposited in the reserve account for the Notes, if any, all of the proceeds from the sale of the Notes, together with any investment earnings thereon, will be expended for payment of costs of acquisition and construction of the Project on or before November 1, 2010. The acquisition and construction of the Project is expected to be completed by November 1, 2010.

7. The total cost of the Project is estimated to be \$320,000. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Notes	\$ 320,000.00
Total Sources	\$ 320,000.00

USES

Costs of Project	\$ 283,200.00
Capitalized Interest	\$ 28,800.00
Costs of Issuance	\$ 8,000.00
Total Uses	\$ 320,000.00

8. Pursuant to Article V of the Note Ordinance, the following special funds or accounts have been created (or continued pursuant to the Prior Ordinances):

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2010 A Notes Construction Trust Fund; and
- (4) Series 2010 A Notes Sinking Fund.

9. Pursuant to Article VI of the Note Ordinance, the proceeds of the Notes will be deposited as follows:

(1) Bond proceeds in the amount of \$28,800 will be deposited in the Series 2010 A Note Fund as capitalized interest.

(2) The balance of the proceeds of the Notes will be deposited in the Series 2010 A Notes Construction Trust Fund as received from time to time and applied solely to payment of costs of acquisition and construction of the Project, including costs of issuance of the Notes and related costs, and for no other purpose.

10. Moneys held in the Series 2010 A Notes Sinking Fund will be used solely to pay principal of and interest, if any, on the Notes and will not be available to meet costs of acquisition and construction of the Project.

11. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 2 months of the date hereof.

12. The Issuer will take such steps as requested by the Authority to ensure that the Authority's Notes meet the requirements of the Code.

13. With the exception of the amount deposited in the Series 2010 A Notes Fund as capitalized interest, if any, all of the proceeds of the Notes will be expended on the Project within 15 months from the date of issuance thereof.

14. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Notes.

15. The amount designated as cost of issuance of the Notes consists only of costs which are directly related to and necessary for the issuance of the Notes.

16. All property financed with the proceeds of the Notes will be owned and held by (or on behalf of) a qualified governmental unit.

17. No proceeds of the Notes will be used, directly or indirectly, in any trade or business carried on by any person who is not a governmental unit.

18. The original proceeds of the Notes will not exceed the amount necessary for the purposes of the issue.

19. The Issuer shall use the proceeds of the Notes solely for the costs of acquisition and construction of the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

20. The Notes are not federally guaranteed.

21. The Issuer has retained the right to amend the Note Ordinance authorizing the issuance of the Notes if such amendment is necessary to assure that the Notes remain governmental or public purpose Notes.

22. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Notes, (b) are to be sold pursuant to a common plan of financing together with the Notes and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as the Notes.


23. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

24. The Issuer will comply with instructions as may be provided by the Authority, at any time, regarding use and investment of proceeds of the Notes, rebates and rebate calculations.

25. To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

WITNESS my signature as of the date first written above.

TOWN OF CHAPMANVILLE

  
\_\_\_\_\_  
Mayor

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

CERTIFICATE OF RECORDER AS TO TRUTH  
AND ACCURACY OF DOCUMENTS DELIVERED

The undersigned duly elected Recorder of the Town of Chapmanville, West Virginia (the "Issuer"), hereby certify that the copies of the following documents being delivered in connection with the closing of the sale of the \$320,000 Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) (the "Notes"), are, as of the date hereof, true and accurate copies of the originals of those documents maintained on file with the Issuer and delivered in the transcript of proceedings, that said documents have been duly adopted, enacted or entered by the Council of the Issuer, and that said documents are still in full force and effect as of the date hereof and have not been repealed, rescinded, superseded, amended or modified in any way unless the document effecting such repeal, rescission, supersedence, amendment or modification is also listed below:

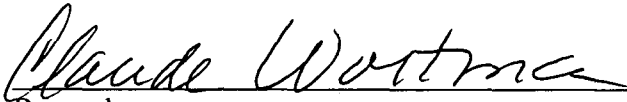
1. Charter and Procedural Ordinances.
2. Rules of Procedure.
3. Oaths of Office of Mayor, Recorder and Council Members.
4. Note Ordinance.
5. Minutes of Council Meetings regarding All Readings and Public Hearing of the Note Ordinance and adoption of Supplemental Resolution.
6. Affidavit of Publication of the Notice of Public Hearing and Abstract of Note Ordinance.
7. Supplemental Resolution.
8. Loan Agreement.
9. Public Service Commission Order.

10. West Virginia Infrastructure and Jobs Development Council Approval Letter.
11. BPH Permit.

[The rest of this page is intentionally left blank.]

WITNESS my signature and the official seal of the Town of Chapmanville,  
West Virginia, on this 13<sup>th</sup> day of August, 2010.

[SEAL]

  
Recorder



TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

CERTIFICATE OF CONSULTING ENGINEER

I, Frederick L. Hypes, Registered Professional Engineer, West Virginia License No. 9327, of Dunn Engineers, Inc., Consulting Engineers, Charleston, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the sewerage portion of the existing combined waterworks and sewerage system (the "System") of the Town of Chapmanville (the "Issuer") to be constructed primarily in Logan County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Notes") of the Issuer. All capitalized words not defined herein shall have the same meaning set forth in the Bond Ordinance passed by the Issuer on July 12, 2010, effective August 9, 2010, and the Loan Agreement by and among the Issuer and the West Virginia Water Development Authority (the "Authority"), dated August 13, 2010 (the "Loan Agreement").

2. The Notes are being issued for the purposes of (i) paying the costs of acquisition and construction of the Project; and (ii) paying costs of issuance and related costs.

3. To the best of my knowledge, information and belief (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the Authority and any change orders approved by the Issuer, the Authority and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at

least 40 years, if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule A attached hereto as Exhibit A, and in reliance upon the opinion of Avis, Witten & Wandling, L.C., of even date herewith, all successful bidder(s) have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders have provided the Drug-Free Workplace Affidavit as evidence of the Vendor's compliance with the provisions of Article 1D, Chapter 21 of the West Virginia Code; (v) the successful bidder(s) received any and all addenda to the original bid documents; (vi) the bid documents relating to the Project reflect the Project as approved by the Authority and the bid form(s) provided to the bidders contain all critical operational components of the Project; (vii) the successful bid(s) include prices for every item on such bid form(s) ; (viii) the uniform bid procedures were followed; (ix) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (x) the net proceeds of the Notes, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Bureau of Public Health; and (xi) attached hereto as Exhibit A is the final amended "Schedule A - Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

4. The project will serve 1 new customer in the Chapmanville area of Logan County.

WITNESS my signature and seal on this 13<sup>th</sup> day of August, 2010.

[SEAL]



DUNN ENGINEERS, INC.

A handwritten signature of Frederick L. Hypes, written in black ink over a solid horizontal line.

Frederick L. Hypes, P.E.

West Virginia License No. 9327

# WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

## SCHEDULE B

Marshall University Rural Health and Clinical Education Center

Wastewater Collection System Extension

### FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project	Total	WDA	[Project Sponsor]
1. Construction	\$205,524.00		
a.			
b.			
c.			
d.			
2. Engineering Fees	\$45,000.00		
3. Legal	\$2,500.00		
4. Administration	\$7,500.00		
5. Sites and Other Lands	\$0.00		
6. Contingency	\$22,676.00		
7. Total of Lines 1 through 6	\$283,200.00		
B. Sources of Funds			
8. Local	\$0.00		
9. Net Proceeds Required from Bond Issue (Line 7 minus Line 8)	\$283,200.00		
C. Cost of Financing			
10. Other Costs *Registrar - \$500 *Capital Interest - \$28,800	\$29,300.00*		
a. Bond Counsel	\$7,500.00		
b. Accountant	\$0.00		
11. Total Cost of Financing (Lines 10a and 10b)	\$36,800.00		
12. Size of Bond Issue (Line 9 plus Line 11)	\$320,000.00		

GOVERNMENTAL AGENCY

DATE: August 13, 2010

CONSULTING ENGINEER

DATE: 13 August 2010

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

RECEIPT FOR NOTES

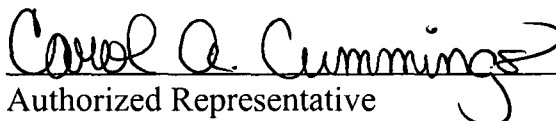
The undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, hereby certifies as follows:

1. On the 13<sup>th</sup> day of August, 2010, in Charleston, West Virginia, the Authority received the entire original issue of \$320,000 in aggregate principal amount of the Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) (the "Notes"), of the Town of Chapmanville (the "Issuer"), dated August 13, 2010, issued in the form of one note, fully registered to the Authority, and numbered A-1.

2. At the time of the receipt of the Notes, they had been executed by the Mayor of the Issuer and attested by the Recorder of the Issuer, by their respective manual signatures, and the official seal of the Issuer had been impressed upon the Notes.

WITNESS my signature on this 13<sup>th</sup> day of August, 2010.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

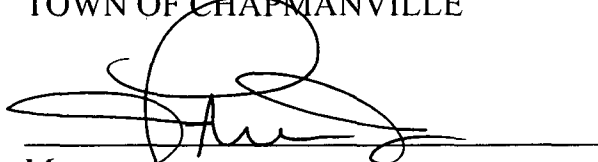
RECEIPT FOR NOTE PROCEEDS

The undersigned Mayor of the Town of Chapmanville (the "Issuer"), for and on behalf of the Issuer, hereby certifies as follows:

The Issuer has received and hereby acknowledges receipt from the West Virginia Water Development Authority (the "Authority"), as original purchaser of the \$320,000 Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) (the "Notes"), of \$25,000, being more than a de minimis portion of the purchase price of the Notes. The Issuer understands that the remaining proceeds of the Notes will be advanced to the Issuer from time to time as construction proceeds to completion.

WITNESS my signature on this 13<sup>th</sup> day of August, 2010.

TOWN OF CHAPMANVILLE

  
\_\_\_\_\_  
Mayor

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

REQUEST AND AUTHORIZATION TO AUTHENTICATE  
AND DELIVER THE NOTES

August 13, 2010

United Bank, Inc.  
500 Virginia Street, East  
Charleston, WV 25301

Ladies and Gentlemen:

We herewith hand to you, duly executed, the \$320,000 Town of Chapmanville Combined Sewer and Water Grant Anticipation Notes, Series 2010 A (West Virginia Water Development Authority), in the form of one note, numbered A-1 (the "Notes"), of the Town of Chapmanville, West Virginia (the "Issuer"), authorized to be issued under and pursuant to a Note Ordinance duly passed by the Issuer on July 12, 2010, and effective August 9, 2010, and a Supplemental Resolution duly adopted by the Issuer on August 9, 2010.

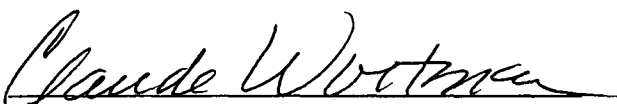
You are hereby requested and authorized to register, authenticate and deliver the Notes on behalf of the Issuer to the West Virginia Water Development Authority.

TOWN OF CHAPMANVILLE

Mayor

[SEAL]

Attest:

  
Recorder

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 13<sup>th</sup> day of August, 2010, by and between the TOWN OF CHAPMANVILLE, WEST VIRGINIA, a municipal corporation (the "Issuer"), and UNITED BANK, INC., Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$320,000 Town of Chapmanville Combined Water and Sewer Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority) (the "Notes"), in the form of one note, numbered A-1, in fully registered form, pursuant to a Note Ordinance duly passed by the Issuer on July 12, 2010, effective August 9, 2010, and a Supplemental Resolution duly adopted by the Issuer on August 9, 2010 (collectively, the "Ordinance");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Ordinance, a copy of which is attached as Exhibit A hereto and incorporated herein by reference;

WHEREAS, the Ordinance provides for an appointment by the Issuer of a Registrar for the Notes; and

WHEREAS, the Issuer desires to appoint, and by the Ordinance and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Ordinance and to take certain other actions hereinafter set forth.

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Notes, all as set forth in the Ordinance, such duties including, among other things, the duties to authenticate, register and deliver Notes upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exclusion of interest, if any, on the Notes from gross income for federal income tax purposes, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

{C1835330.1}



2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the annexed schedule.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Ordinance with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Ordinance, the terms of the Ordinance shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Ordinance will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective address:

ISSUER:

Town of Chapmanville  
Town Hall  
P.O. Box 426  
Chapmanville, WV 25508  
Attention: Mayor

REGISTRAR:

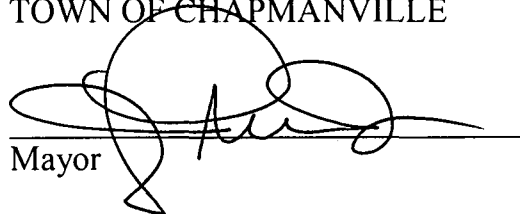
United Bank, Inc.  
500 Virginia Street, East  
Charleston, WV 25301  
Attention: Corporate Trust Department

The Issuer and the Registrar shall notify the other in writing of any change of address.

8. The Registrar is hereby requested and authorized to register, authenticate and deliver the Notes in accordance with the Ordinance.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

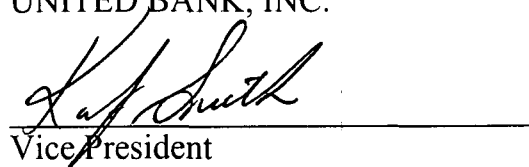
TOWN OF CHAPMANVILLE



Handwritten signature of the Mayor of Chapmanville, written over a horizontal line.

Mayor

UNITED BANK, INC.



Handwritten signature of the Vice President of United Bank, Inc., written over a horizontal line.

Vice President

## EXHIBIT A

See Note Ordinance (Index No. 6)  
See Supplemental Resolution (Index No. 7)

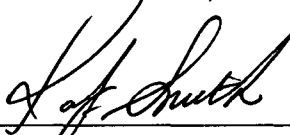
TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

CERTIFICATE OF REGISTRATION OF NOTES

UNITED BANK, INC ., Charleston, West Virginia, as Registrar (the “Registrar”), hereby certifies that on the date hereof, the single, fully registered Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), of the Town of Chapmanville, West Virginia (the “Issuer”), dated August 13, 2010, in the principal amount of \$320,000, numbered A-1, was registered as to principal and interest in the name of “West Virginia Water Development Authority” in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of United Bank, Inc., as Registrar.

WITNESS my signature on this 13<sup>th</sup> day of August, 2010.

UNITED BANK, INC.

  
\_\_\_\_\_  
Vice President

3.10

TOWN OF CHAPMANVILLE  
COMBINED SEWER AND WATER GRANT ANTICIPATION NOTE,  
SERIES 2010 A  
(WEST VIRGINIA WATER DEVELOPMENT AUTHORITY)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

LOGAN BANK & TRUST, Chapmanville, West Virginia, hereby accepts appointment as Depository Bank in connection with a Note Ordinance of the Town of Chapmanville, West Virginia (the "Issuer"), passed by the Issuer on July 12, 2010, effective August 9, 2010, and a Supplemental Resolution adopted by the Issuer on August 9, 2010, (collectively, the "Ordinance"), authorizing the issuance of the Issuer's Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), in the aggregate principal amount of \$320,000, dated August 13, 2010, and agrees to serve as Depository Bank, all as set forth in the Ordinance.

WITNESS my signature on this 13<sup>th</sup> day of August, 2010.

LOGAN BANK & TRUST

By:  U.P.

Its Authorized Officer

1207 Quarrier Street, Suite 401  
Charleston, WV 25301  
(304) 348-3971

## NEW ISSUE REPORT FORM

Date of Report: August 13, 2010

Transfers Required: \_\_\_\_\_

07/30/2010

PRODUCER 304.752.6850 FAX 304.752.5380  
 Bray & Oakley Insurance Agency, Inc.  
 P. O. Box 386  
 213 Main Street  
 Logan, WV 25601

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION  
 ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE  
 HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR  
 ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Town of Chapmanville  
 Box 426  
 Chapmanville, WV 25508

## INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: National Union Fire Co.

19445

INSURER B: BrickStreet Insurance

INSURER C:

INSURER D:

INSURER E:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY	900000533	07/01/2010	07/01/2011	EACH OCCURRENCE \$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 0
		<input checked="" type="checkbox"/> Professional				PERSONAL & ADV INJURY \$ Incuded
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$ N/A
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$ N/A
A		AUTOMOBILE LIABILITY	900000533	07/01/2010	07/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input checked="" type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input checked="" type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
<input checked="" type="checkbox"/> HIRED AUTOS						
<input checked="" type="checkbox"/> NON-OWNED AUTOS						
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
		<input type="checkbox"/> DEDUCTIBLE				\$
		RETENTION \$				\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC10000965-08	07/01/2010	07/01/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ 100,000
						E.L. DISEASE - EA EMPLOYEE \$ 100,000
						E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is listed as an additional insured in respects the general liability.

## CERTIFICATE HOLDER

Water Development Authority  
 S. Ryan White  
 500 Lee St. East  
 Suite 1600  
 Charleston, WV 25301

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Carol Craft*

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.





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**CLOSING MEMORANDUM**

3.13

**To:** Lana Pritchard  
Brian Kirkendoll  
Carol Cummings  
Sara Boardman

**From:** Ryan White

**Date:** August 13, 2010

**Re:** Town of Chapmanville Combined Sewer and Water Grant  
Anticipation Note, Series 2010 A (West Virginia Water Development  
Authority)

---

1. **DISBURSEMENTS TO CITY**

Payor:	West Virginia Water Development Authority
Source:	Series 2010 A Note Proceeds
Amount:	\$25,000
Date:	August 13, 2010
Form:	Wire
Payee:	Town of Chapmanville
Bank:	Logan Bank & Trust
ABA Number:	051505102
Account Number:	0047937
Account:	Series 2010 A Notes Construction Trust Fund

{C1835178.1}

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 9<sup>th</sup> day of August, 2010.

CASE NO. 10-1149-S-PC-CN

TOWN OF CHAPMANVILLE, Logan County.

Application requesting a determination that a certificate of convenience and necessity is not required for a sanitary sewer extension to serve the Marshall University Rural Health and Clinical Education Center, or in the alternative, for the issuance of a certificate of convenience and necessity for this project.

**COMMISSION ORDER**

The Commission concludes that the sewer line extension project for the Marshall University Rural Health and Clinical Education Center is an ordinary extension of an existing system in the usual course of business.

**BACKGROUND**

On July 26, 2010, the Town of Chapmanville asked the Commission to declare that a proposed extension of sewer service to serve a new Marshall University Rural Health and Clinical Education Center is an extension in the ordinary course of business for the Chapmanville Water and Sewer Department. Petition p. 1.

Chapmanville has received approval from the West Virginia Infrastructure and Jobs Development Council for a \$320,000 Grant Anticipation Note, to be taken out with a Governor's Special Appropriation grant, to fund the extension to the MU Rural Health Clinic. The West Virginia Water Development Authority will purchase the Grant Anticipation Note at three percent interest for three years with interest capitalized, subject to conditions set forth in a Loan Agreement between the WDA and Chapmanville. Petition p. 2 & WDA letter p. 1 (Aug. 4, 2010).

The extension will only serve the Rural Health Clinic and will consist of an 11-gallon-per-minute duplex grinder pump station, about 2,900 linear feet of 1-1/2" force main, and all

necessary valves, controls, and appurtenances. Petition p. 2. The project was designed by Dunn Engineers, Inc. of Charleston, and Chapmanville anticipates opening bids on August 2, 2010. Construction must be completed no later than November 1, 2010, in order to not delay the clinic's opening. Chapmanville therefore requested expedited consideration.

Chapmanville has received a Permit for the project from the West Virginia Office of Environmental Health Services. The project will have no impact on Chapmanville's current sewer rates and charges. Chapmanville asked that the proposed project be considered as an extension of its utility assets in the ordinary course of business. Id. p. 3.

On August 6, 2010, Commission Staff agreed that this proposed project is in the ordinary course of business for the Chapmanville Water and Sewer Department. Initial & Final Joint Staff Memorandum p. 4. Technical Staff evaluated several factors that the Commission has used to assess whether a particular project is in the ordinary course of business for a utility:

- a) the estimated project cost compared with annual revenues – the \$300,038 estimated cost is equivalent to 93% of Chapmanville's 2009 operating revenues,
- b) the level of complexity (engineering or otherwise) – the project does not encompass complex engineering,
- c) project funding – WDA will purchase a Grant Anticipation Note at three percent interest with a term of three years,
- d) the factors driving the project – the new MU Rural Health and Clinical Education Center needs sewer service to open and operate,
- e) project urgency – bids were opened on August 2, 2010, and construction must be completed by November 1, 2010,
- f) the experience and competency of project staff – Dunn Engineers designed the project and has had many projects approved by the Commission,
- g) the applicant's regulatory history – Staff knows of no adverse history that would give rise to doubts as to Chapmanville's competency to construct this extension, and
- h) the project's potential benefits and risks – the clinic will bring economic benefits to the area, in addition to providing access to health care in a rural area. Chapmanville will benefit from increased revenues without having to raise sewer rates.

Utilities Division & Engineering Division Initial & Final Recommendation pp. 2-3, attached to Initial & Final Joint Staff Memorandum.

## DISCUSSION

W. Va. Code § 24-2-11 requires that entities constructing utility facilities obtain a certificate of public convenience and necessity. The Code exempts from this requirement ordinary extensions of existing systems in the usual course of business. In General Order 246, In the Matter of Establishing Comprehensive Criteria or Rules for the Application of Section 24-2-11, West Virginia Code, for Utility Construction Projects, issued on February 24, 1993, the Commission decided not to develop specific guidelines on when a certificate application should be filed, but urged public utilities to consult with Staff on a case-by-case basis on whether a construction project that will provide service to the public requires a certificate.

In Town of West Hamlin, Case Number 05-0282-W-PW (Commission Order April 25, 2005), the Commission cited South Putnam Public Service District, Case Number 04-0034-PWD-PC (Recommended Decision March 17, 2004; Final Order April 6, 2004) and its criteria for determining whether a project is an ordinary extension:

The Code provision does not define or elaborate as to what constitutes an 'ordinary extension' of an existing system, although it has been construed to mean that construction activities which deal with the in-kind replacement of existing facilities are not subject to the certification process. Historically, Commission Staff has looked at various factors, any of which are subjective, in order to make a determination regarding the need for a certificate. These factors include, but are not limited to, the following: (a) the estimated cost of the project as compared with the annual revenues of the applicant; (b) the level of complexity (engineering or otherwise) of the proposed project; (c) the type of funding proposed for the project; (d) the factors driving the project; (e) the urgency of the project; (f) the experience and competency of the applicant's staff and/or professional consultants; (g) the regulatory history of the applicant; and (h) the potential benefits and risks of the project.

South Putnam p. 4.

In some cases the Commission has determined projects to be in the ordinary course when the cost of a project is low compared to annual utility revenues, grant funds result in no rate impact, and engineering design was not required. See, e.g., Southwestern Water Dist., Case No. 04-1103-PWD-PW (Comm'n Order Sept. 21, 2004). The Commission has also denied a request that an extension be deemed in the ordinary course, however, when engineering concerns were present and funding was uncertain. Raleigh Co. PSD, Case No. 02-0523-PWD-P (Comm'n Order April 25, 2003).

In this particular case, Staff advises, among other things, that this project is not complex, the engineering firm has designed many projects that have been approved by this Commission, construction must be completed by November 1, 2010, rates will not increase, there is no cause to doubt Chapmanville's competency to construct this extension, and the health clinic will bring economic benefits to the area, in addition to providing access to health care in a rural area. The Commission therefore concludes that the proposed extension sewer of service to the MU Rural Health Clinic is in the usual course of business for Chapmanville. Accordingly, a certificate is not required.

### **FINDINGS OF FACT**

1. Chapmanville requested a declaration that a proposed extension of sewer service to the new MU Rural Health Clinic is in the utility's ordinary course of business. Petition pp. 1-4 (July 26, 2010).

2. Staff recommended that the Commission approve the Chapmanville request. Final Joint Staff Memorandum pp. 1-2 & attachments (Aug. 6, 2010).

### **CONCLUSION OF LAW**

Because the extension to bring sewer service to the MU Rural Health Clinic is not complex, the utility is experienced in constructing extensions and working with consulting engineers, rates will not increase, the engineering firm has designed many projects that have been approved by this Commission, and the health clinic will bring economic benefits to the area, in addition to providing access to health care in a rural area, we conclude that the proposed extension is in the usual course of business for Chapmanville. See W. Va. Code § 24-2-11(a).

### **ORDER**

IT IS THEREFORE ORDERED that this project to extend sewer service to the MU Rural Health Clinic is an ordinary extension in the usual course of business for the Chapmanville Water and Sewer Department.

IT IS FURTHER ORDERED that this matter is removed from the Commission's docket of active cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

CLW/sek  
101149c.wpd



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4.1

August 13, 2010

Town of Chapmanville  
P.O. Box 426  
Chapmanville, WV 25508

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Re: Town of Chapmanville Combined Sewer and Water Grant Anticipation  
Note, Series 2010 A (West Virginia Water Development Authority)

Ladies and Gentlemen:

We have served as bond counsel to the Town of Chapmanville (the “Issuer”), a municipal corporation, in connection with the issuance of its Combined Sewer and Water Grant Anticipation Note, Series 2010 A (West Virginia Water Development Authority), dated the date hereof (the “Notes”).

We have examined a certified copy of the proceedings and other papers relating to the authorization of (i) a loan agreement for the Notes, dated August 13, 2010 (the “Loan Agreement”), including all schedules and exhibits attached thereto, by and among the Issuer and the West Virginia Water Development Authority (the “Authority”), and (ii) the Notes to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Notes are in the principal amount of \$320,000 and issued in the form of one note, registered as to principal and interest to the Authority. The Notes shall bear interest at the rate of 3% and is payable on the date as set forth in the “Schedule Y” attached to the Loan Agreement and incorporated in and made a part of the Notes. The entire principal amount of the Note shall be paid at maturity on August 13, 2013.

The Notes are issued for the purposes of (i) paying a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the sewerage portion of the existing waterworks and sewerage system of the Issuer (the “Project”); and (ii) paying certain issuance and other costs in connection therewith.

{C1838267.1}

We have also examined the applicable provisions of Chapter 8, Article 20 and Chapter 22C, Article 1 of the West Virginia Code of 1931, as amended (collectively, the “Act”), and the Bond Ordinance duly passed by the Issuer on July 12, 2010, effective August 9, 2010, as supplemented by the Supplemental Resolution duly adopted by the Issuer on August 9, 2010 (collectively, the “Ordinance”), pursuant to and under which Act and Ordinance the Notes are authorized and issued, and the Loan Agreement has been undertaken. The Notes are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Ordinance and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion, under existing law, as follows:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to issue and sell the Notes, all under the Act and other applicable provisions of law.
2. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.
3. The Loan Agreement inures to the benefit of the Authority and cannot be amended so as to affect adversely the rights of the Authority or diminish the obligations of the Issuer without the written consent of the Authority.
4. The Issuer legally and effectively enacted the Ordinance and all other necessary resolutions in connection with the issuance and sale of the Notes. The Ordinance constitutes a valid and binding obligation of the Issuer enforceable in accordance with the terms thereof and contains provisions and covenants substantially in the form of those set forth in the Loan Agreement.
5. The Notes have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid and legally enforceable special obligations of the Issuer, payable from the proceeds of the Grants referred to in the Ordinance, all in accordance with the terms of the Notes and the Ordinance.



6. The Issuer has reserved the right to issue additional bonds ranking on a parity with the Notes, as provided in the Act pursuant to the Ordinance.

7. The Notes and any interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

No opinion is given herein as to the effect upon enforceability of the Notes under any applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights or the exercise of judicial discretion or principles of equity in appropriate cases.

We have examined the executed and authenticated Note numbered A-1 and in our opinion, the form of said Note and its execution and authentication is regular and proper.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joel Kelly PLLC". The signature is written in a cursive, flowing style.

# AVIS, WITTEN & WANDLING, L.C.

## LAW OFFICES

Telephone (304) 752-2838

FAX (304) 752-2728

Douglas Witten  
Donald C. Wandling  
Anne L. Wandling  
Robert B. Kuenzel  
David A. Wandling

511 Dingess Street  
P.O. Box 420  
Logan, WV 25601

August 10, 2010

August 13, 2010

Town of Chapmanville  
P.O. Box 426  
Chapmanville, WV 25508

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Jackson Kelly PLLC  
P. O. Box 553  
Charleston, WV 25322

Re: Town of Chapmanville Combined Sewer and Water Grant Anticipation Note, Series 2010  
A (West Virginia Water Development Authority)

Ladies and Gentlemen:

I am counsel to the Town of Chapmanville, West Virginia (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson Kelly PLLC, as bond counsel, relating to the above-captioned bonds of the Issuer (the "Notes"), a loan agreement for the Notes, dated August 13, 2010 (the "Loan Agreement"), including all schedules and exhibits attached thereto, by and among the West Virginia Water Development Authority (the "Authority") and the Issuer, a Note Ordinance duly passed by the Issuer on July 12, 2010, effective August 9, 2010, as supplemented by a Supplemental Resolution duly adopted by the Issuer on August 9, 2010 (collectively, the "Ordinance"), and other documents relating to the Notes. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Ordinance and the Loan Agreement.

**Town of Chapmanville**  
**West Virginia Water Development Authority**  
**Jackson Kelly PLLC**  
**August 13, 2010**  
**Page Two (2)**

I am of the opinion that:

1. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System and to issue and sell the Notes, all under the Act and other applicable provisions of law.
1. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.
2. The members and officers of the Council of the Issuer have been duly, lawfully and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act in their respective capacities on behalf of the Issuer.
3. The Ordinance has been duly adopted and enacted by the Issuer and is in full force and effect.
4. The execution and delivery of the Notes and the Loan Agreement and the consummation of the transactions contemplated by the Notes, the Loan Agreement and the Ordinance, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach or default under any agreement, document or instrument to which the Issuer is a party or by which the Issuer or its properties are bound or any existing law, regulation, rule, order or decree to which the Issuer is subject.
5. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the creation and existence of the Issuer, the issuance of the Notes, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia.

**Town of Chapmanville  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
August 13, 2010  
Page Two (3)**

6. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Loan Agreement, the Notes and the Ordinance, the acquisition and construction of the Project, the operation of the System, the validity of the Notes or the collection or pledge of the Net Revenues therefrom.
7. I have ascertained that all successful bidders have provided the drugfree workplace affidavit, submitted their drug free workplace plan, and the contracts contain language that comply with the Drug Free Workplace Act, Article 1D, Chapter 21 of the West Virginia Code. I have also ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and I have reviewed such insurance policies or binders and such bonds for accuracy. Based upon my review of the contracts, the surety bonds and the policies or other evidence of insurance coverage in connection with the Project, I am of the opinion that such surety bonds and policies (1) are in compliance with the contracts; (2) are adequate in form, substance and amount to protect the various interest of the Issuer; (3) have been executed by duly authorized representatives of the proper parties; (4) meet the requirements of the Act, the Ordinance and the Loan Agreement; and (5) all such documents constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

If you have any questions, please feel free to contact me. I am,

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert B. Kuenzel II', written in a cursive style.

Robert B. Kuenzel II, Esquire

H. Wyatt Hanna III  
Attorney at Law

---

H. Wyatt Hanna, III

WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303  
(304) 744-3150 • Fax (304) 744-3157  
August 13, 2010

The Town of Chapmanville  
Chapmanville, WV 25508

West Virginia Water Development Authority  
Charleston, WV 25311

Jackson Kelly PLLC  
Charleston, WV 25301

Re: The Town of Chapmanville  
Sewer and Water Grant Anticipation Notes, Series 2010 A  
(West Virginia Water Development Authority)

Ladies and Gentlemen:

I am special counsel to The Town of Chapmanville, a municipal corporation in Logan County, West Virginia (the "Issuer"). As such counsel, I have represented the Issuer before the Public Service Commission of West Virginia in connection with the issuance of the above-referenced bonds, and the acquisition and construction of the Project. All capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer has received all orders, certificates and authorizations from the Public Service Commission of West Virginia necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System. The Issuer has received a Final Order of the PSC in Case No. 10-1149-S-PC-CN on August 9, 2010, among other things, stating that the Issuer is not required to obtain a certificate of public convenience and necessity for the Project. The time for appeal of such Order has not expired prior to the date hereof. However, all parties to the Order have indicated that they will not appeal such Final Order.

The Town of Chapmanville  
West Virginia Water Development Authority  
Jackson Kelly PLLC  
August 13, 2010  
Page 2

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Wyatt Hanna III". The signature is stylized with a large "H" and a prominent "III" at the end.

H. WYATT HANNA III, ESQ.

H. Wyatt Hanna III  
Attorney at Law

---

H. Wyatt Hanna, III

WV State Bar No. 1579

P. O. Box 8070 • South Charleston, West Virginia 25303  
(304) 744-3150 • Fax (304) 744-3157

August 13, 2010

The Town of Chapmanville  
Chapmanville, WV 25508

West Virginia Water Development Authority  
Charleston, WV 25311

Jackson Kelly PLLC  
Charleston, WV 25301

Re: Final Title Opinion for The Town of Chapmanville

Ladies and Gentlemen:

I am counsel for The Town of Chapmanville (the “Issuer”) in connection with a proposed project to construct certain extensions, additions, betterments and improvements consisting of the construction of additions and improvements to the wastewater portion of the Issuer’s Combined Waterworks and Wastewater system consisting of installation of a grinder pumping station along with approximately 4,000 LF of 1 – 1/2” forcemain to provide service to Marshall University Medical and Clinical Education Center (the “Project”) to the existing combined waterworks and sewerage system of the Issuer. I provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Water Development Authority (the “WDA”) for the Project. Please be advised of the following:

1. I am of the opinion that the Issuer is a duly created and validly existing municipality possessed with all the powers and authority granted to municipalities under the laws of the State of West Virginia to construct, operate and maintain the Project as approved by the WDA.

2. The Issuer has obtained all necessary permits and approvals for the construction of the Project.

Final Title Opinion

Page 2

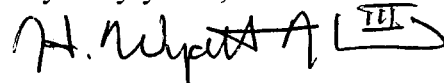
August 13, 2010

3. I have investigated and ascertained the location of, and I am familiar with the legal description of, the necessary sites, including easements and/or rights of way, required for the Project as set forth in the plans for the Project prepared by Dunn Engineers, Inc., the consulting engineer for the Project.

4. I have examined the records on file in the Office of the Clerk of the County Commission of Logan County, West Virginia, the county in which the Project is to be located, and, in my opinion, the Issuer has acquired legal title or such other estate or interest in all of the necessary site components for the Project, including all easements and/or rights of way, sufficient to assure undisturbed use and possession for the purpose of construction, operation and maintenance for the estimated life of the Project.

5. All deeds, easements and rights of way which have been acquired to date by the Issuer have been duly recorded in the Office of the Clerk of the County Commission of Logan County to protect the legal title to and interest of the Issuer.

Very truly yours,

A handwritten signature in black ink, appearing to read "H. Wyatt Hanna III". The signature is stylized with a large, looped "H" and a distinct "III" at the end.

H. WYATT HANNA III, ESQ.